

CONSUMER JUSTICE

(A Manual for Consumer Forum Members)

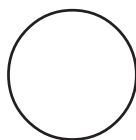
CONSUMER JUSTICE

(A Manual for Consumer Forum Members)

P.V.V. Satyanarayana Murthy

B.L., M.B.A., Ph.D.

Member, District Consumer Forum,
Vijayawada, A.P

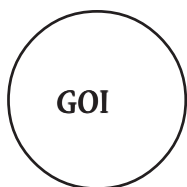


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FOREWORD

I had the privilege to go through the book “Consumer Justice” (A Manual for Members of Consumer Fora) written by P.V.V. Satyanarayana Murthy, Member, District Consumer Forum, Vijayawada, Andhra Pradesh.

The book enriches the Knowledge of the Member of the District Forum, the state Commission as well as the consumers. It would certainly assist the Consumer Fora in implementing the benevolent welfare legislation. Quick dispensation of justice is the foundation of the Consumer Fora. As such, Consumer Fora are expected to render justice in most equitable manner.

The author in his book has vividly explained as to how to improve the writing skills to make an order complete and meaningful. As rightly said member’s performance is appraised by the litigant public and legal professionals basing on order writing skills. A Member to justify his appointment as an adjudicator must improve his listening, reading and writing skills. This is what the author has exactly tried to impress the reader by providing necessary inputs.

The book is like reading a reckoner and the people concerned can find answers for many of their doubts relating to procedures, administrative functions, enforcement of orders

and penal provisions against the contemnors etc. If any member takes over the administration of the Forum, in the absence of the President, he will be under pressure to learn the functions of the presiding member. All these aspects are well covered in this book.

I have no hesitation to say that this book would be very useful to the members of the Consumer Fora. The work done by P.V.V. Satyanarayana Murthy deserves appreciation.

Justice M.B. Shah

PREFACE

In the history of socio-economic legislations, Consumer Protection Act, 1986 is landmark legislation in the sense that it envisages simple, speedy and inexpensive justice. It is a silver lining on the dark clouds of delayed justice. Consumer Protection Act provides benefit directly to the consumer. Prior to enactment of Consumer Protection Act, 1986 there are more than 25 legislations, which echo the spirit of consumerism. As these legislations failed to accomplish the avowed objectives, Government of India enacted this Act keeping in view the inadequacies of other legislations. The emphasis in this Act is more on providing consumer friendly ambience by removing hyper technicalities of judicial proceedings. For this purpose members who are not quite conversant with legal procedures are appointed as members. Thus a greater responsibility is cast on these other (lay) members to create an ambience in which the consumer can pursue his matter without any legal hassels. There is no need even to engage lawyers.

Government of India, Department of Consumer Affairs is making all efforts to make these members knowledgeable by providing training to them. Similarly various State Governments are also putting their efforts to equip the members with necessary knowledge to carryout their assignment judiciously. But these training programmes are more or less orientation programmes on consumer related laws, that too, for a very short period of six days. Because of this brief training, the members are not adequately taught on many issues. Presidents who have very good experience in judicial proceedings are not evincing interest to train the members at work. As a result, either they become silent spectators or fail to appreciate the legal implications.

In order to overcome the problems and to acquire necessary skills to protect consumers the members should acquaint themselves on market situations prevailing, frauds in the market and aspects of consumerism. Consumer Protection Act alone cannot protect consumers unless the legal machinery is effective. The effectiveness of legal mechanism depends upon the

performance of the members of Consumer Disputes Redressal Agencies. The performance of Members in turn depends upon the interest they evince in acquiring knowledge for proper adjudication of disputes to provide better protection to consumers. As the term of office of 5 years is too short a period for a member to acquire adequate knowledge to excel his performance, there is need to show keen interest on the matters right from day one in order to complete his term of office with full satisfaction.

Every step that is being taken by the bench is either directly or indirectly connected to procedural laws. Of course, there are good no. of decisions stating that, all provisions of CPC are not applicable to the proceedings before the redressal Forums. If various provisions of Consumer Protection Act are diligently read, one can understand that the procedural laws strike at the root. But the National Commission held that whatever provisions are enumerated under Section 13 are only applicable before the Redressal Forums. But there are several other aspects like non-joinder, mis-joinder, implement of legal representatives, appointment of Commissioner, attachments, issuing of warrants and many other aspects are governed by procedural laws. In view of this, the member should get acquainted with all the sound principles of CPC as well as Cr PC and also with Evidence Act. Keeping this in mind the relevant provisions of CPC, Cr PC and IPC and the Indian Evidence Act are included in this book, to equip the member with strong foundation. But too much reliance on the procedural laws might defeat the spirit of speedy disposal. Particularly members are required to have knowledge on various procedures relating to judiciary in order to perform their job perfectly and with ease. Procedural laws, civil and criminal rules of practice, provisions of Evidence Act provide insight into the judicial procedures. By gaining such knowledge the members should also develop tact to restrict the application of such provisions under Consumer Protection Act without causing injustice to the cause of justice. This tact is necessary to avoid undue delay in dispensation of justice. The spirit of

Consumer Protection Act manifests curtailment of all procedures that cause delay. But at the same time the members should learn art of saying 'no' to entertain an application made in pursuance of the dialatory tactics of a party.

As a lay member, when I joined District Forum, Vijayawada I was wondering what role could be played by members like me when every decision, both administrative and procedural was made by President and President alone. There were days when I felt boredom sitting idle in the Forum. Even on the bench, which was conducted for two or three hours, I had no role to play except staring at the events. The two important functions I was doing then were signing the attendance register and signing the orders. In order to spend time fruitfully and avoid boredom in the Forum I started reading law journals and articles written by eminent persons in the legal profession. In fact, this reading of law books and various decisions rendered by Consumer Forums transformed me into an assertive member. I realized that the 'lay members' or 'other members', by whatever name they are called, have a positive role to play in dispensation of consumer justice. In order to play the positive role the member should acquire good knowledge mainly on the following:

- How to handle a consumer complaint prior to admission and post admission?
- Provisions of Consumer Protection Act, 1986
- Procedure to be scrupulously followed while adjudicating the complaint
- Rules of evidence
- The reliefs that can be granted under the C.P.Act
- How to arrive at compensation to be awarded
- How to enforce the Forum order
- How to impose penal provisions and the consequent legal implications

- Rules relating to service of process

In addition to the above, the members are required to get familiarized with the administrative functions of the Consumer Disputes Redressal Agencies as they are also assigned with the duties of the President in absence of regular President according to the amendments made to the C.P.Act in 2002. Keeping these matters in view, I prepared this book to serve the members as a reference book.

I profusely thank Sri Justice M.B.Shah, President, National Consumer Disputes Redressal Commission for writing a foreword to my book and providing us guidance through his orders. I acknowledge with thanks the help received from Sri Justice I.Venkatanarayana, President and Sri Justice S.Parvatha Rao, Sri Justice P.Ramakrishnam Raju, the former presidents of A.P.State Consumer Disputes Redressal Commission. My thanks are also due to Sri N.V.S.Talpasayee, President of our District Forum who provided me thoughtful guidance. My thanks are due to Sri Bhanwar Lal, IAS, for his keen interest in promoting such literature for the benefit of Forum Members. I am highly indebted to Sri S.S.Singh. but for whose encouragement I would not have ventured to take up this assignment. He has given me good number of suggestions to improve the quality of this book.

In preparation of this book Ms.J.V.Madhavi assisted me with great devotion and I acknowledge her dedicated work with thanks. My brother Sri V.Ramanuja Rao provided me guidance for which I am beholden to him. My uncle Sri Ch.Sreerama Rao, District Judge (Retd) is always a source of inspiration to me for carrying out works of this nature. My thanks are also due to teachers in my research studies Prof. G. Subrahmanyam and Prof. K.Ramamohana Rao who taught me the art of writing. Finally my sincere thanks are due to my wife Smt.Brunda Devi for her support all through.

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I have the privilege of going through the book on “Consumer Justice” of Dr. P.V.V. Satyanarayana Murthy and find the work very useful and enlightening. The book will no doubt serve the purpose of providing useful guidance to the members in regard to the working of the District Forum. I wish to compliment Dr. Murthy for his interest in the Consumer Justice and the hard work as manifested in the book.

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ABBREVIATIONS

| | |
|------|---------------------------------|
| CC | Consumer Complaint |
| EP | Execution Petition |
| CPC | Civil Procedure Code |
| CrPC | Criminal Procedure Code |
| IA | Interlocutory Application |
| EA | Enforcement Application In I.a. |
| OP | Opposite Party |
| MO | Memo Of Object |
| EX | Exhibit |
| BW | Bailable Warrant |
| NBW | Non-bailable Warrant |
| LR | Legal Representative |
| ACT | Consumer Protection Act |
| IPC | Indian Penal Code |
| CA | Copy Application |
| FC | Fair Copy |

Consumer Forums: District Forum or State Commission or National Commission, as the case may be, or all of them.

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1

INTRODUCTION

Consumer Protection Act (hereinafter referred to as Act) envisages altogether a different system of dispensation of justice. The intention of lawmakers is clear from the Preamble that the Act is passed with a view to provide better protection to the consumers. Better protection in the sense that what similar other legislations could not achieve or failed to achieve in this regard has to be achieved by this Act. The lawmakers even provided for establishment of a separate three-tier judiciary to adjudicate consumer disputes. Further, it is contemplated that the procedures before the redressal agencies (hereinafter called Consumer Forums) should be free from the shackles of tardy judicial procedures. For that matter the courts observed that all the provisions of CPC are not applicable to the proceedings before the Consumer Forums. Thus the trials before the Consumer Forums are made summary in nature. In order to remove technicalities, lay members are appointed to adjudicate the consumer disputes along with the President, who is an experienced jurist. Ordinarily the District Forums shall endeavour to settle the dispute within 90 days, which is a remote possibility in the civil courts. Consumer Protection Act is considered as a unique legislation in view of the above features.

Implementation of any legislation is as important as its

drafting. Particularly a beneficial legislation like Consumer Protection Act requires perfect implementation to achieve its objects. Legal machinery (hereinafter called Consumer Forums) created for this purpose plays critical role in advancing the benefits to the consumers. This legal machinery is endowed with three adjudicators. Ultimately the performance of these adjudicators would decide whether the society is reaping benefits out of this legislation. Out of the three adjudicators two are laypersons as far as judicial proceedings are concerned, but are experienced to appreciate the problems of consumers. A lay member is not quite conversant with the procedural aspects and the related technicalities and hence would create an ambience in which the consumer finds comfort in presenting his case and pursuing the same before the Consumer Forums without getting stuck in the legal jargon.

The member without judicial background is described as a lay member. The lexical meaning of 'lay' is 'not professionally qualified', which in the context of the Act means, a member without professional or specialised knowledge in the judicial or quasi-judicial proceedings. But how long these members can remain as lay members. They need to acquire sufficient knowledge in legal aspects and judicial proceedings. Appreciation of legal aspects is also necessary for these lay adjudicators to make decisions judiciously. As these laypersons are majority in number and the majority decision prevails, their role in the adjudication of consumer disputes is more crucial. Section 10 of the Act deals with the composition of District Forum, which is very essential to understand how these Consumer Forums are constituted.

Generally, when any officer is appointed to carry out important duties he will be on probation for a certain period to develop skills that are necessary to execute his official work. But in the case of Members appointed in the District Forum,

State Commission or National Commission as the case may be, they are joining duties from day one of their appointment without orientation. As a result, they may be finding it difficult in carrying out their assignment. They have to struggle hard to learn the work while on job. Whatever training that is imparted on the Members during their term of office is not adequate unless the training is given for a considerable length of time. Particularly, the members may be perplexed with the procedures to be adopted and precautions to be taken while writing orders. As the vacancies are filled up every time in urgency the selected members are asked to join immediately without knowing the kind of job they are expected to carryout.

Realizing the importance of training for the Members, the Consumer Affairs Department both at State and Central level are designing some training programmes for the benefit of these lay members. But as the duration of these training programmes are limited to 5 or 6 days the usefulness of such training programmes is not tangible. Due to these reasons the Members themselves with their strenuous efforts should learn the skills while on job. The only teacher available to them in the Forum is the President who is well versed with the procedures and art of writing orders. Further, the keen interest and shrewd observation of the proceedings before the Forum would only develop their skills. Particularly the members who do not possess a law degree are at a loss to understand the legal aspects involved in a dispute. Hence, it is necessary for these members to acquire knowledge over these matters for securing respectable position in the quasi-judicial mechanism. At this juncture it is relevant to refer the role of a layperson in the adjudication proceedings.

Prof. Robin C.A. White expressed divergent views on the role of laypersons in decision-making in his book on '*Administration of Justice*'. One view holds that lay

adjudicators are superior to professional judges in the application of general standards of conduct, in their notions of reasonableness, fairness and good faith and that they act as “antidote against excessive technicality” and “some guarantee that the law does not divert too far from reality”. The other view, however is that since they are not experts, lay decision-makers present a very real danger that the dispute may not be resolved in accordance with the prescribed rules of law and the adjudication of claims may be based on whether the claimant is seen as deserving rather than on the legal rules of entitlement. A combination of experienced and laypersons for adjudication of consumer disputes under Consumer Protection Act is made with a view to combine merits of lay decision-making with legal competence. Participation of lay members would lead to general public confidence in the fairness of process and widen the social experience represented by the decision-makers. Again to quote Prof. White “the key role of lay members would be in ensuring that the procedures do not become too full of mystery and ensure that litigants before them are not reduced to passive spectators in a process designed to resolve their disputes.”

As expressed by Prof Robin C.A. White the lay decision-makers present a very real danger by adjudicating the claims on whether the consumer is seen as deserving rather than on the legal rules of entitlement. For instance if a Chit Fund Company does not pay the amount to a prized subscriber and the prized subscriber prefers a claim after two years, the lay member might come to a conclusion that the prized subscriber is entitled to the prize money. But in fact, as the claim is barred by limitation there is no remedy available to the complainant through Consumer Forum as per the rules of law. Similarly if an interlocutory application is filed under an omnibus section 151 of CPC, it may be difficult for the lay member on what to

do with such prayers. He may not be quite conversant with the legal jargon. Under these circumstances if a senior advocate starts quoting profusely various provisions, in the legal language, the lay member is at a disadvantageous position and feels discomfort. Till he acquires the legal knowledge, the discomfort continues.

It is clear from the decisions of the higher courts that all the provisions of CPC are not applicable to the proceedings before the Consumer Forums except the sound principles. The sound principles and their applicability depend upon the facts and circumstances of each case. The National Commission in *Sunil Blood Bank & Transfusion Centre vs. Naresh Kumar II* (2002) CPJ 485 held that all the provisions of CPC are not applicable to the Proceedings before the Redressal Forums constituted under the Consumer Protection Act and only certain specific provisions enumerated under Section 13(4) are only applicable to the proceedings before the Consumer Forums. As the proceedings before the Consumer Forums are summary in nature the courts are holding that the procedural laws need to be restricted for the speedy disposal of cases. To what extent these procedural laws can be restricted is a matter to be decided on the merits of each case. These Forums do not exhaustively follow even the rules of evidence. But in the cases of medical negligence parties are permitted to lead examinations and cross-examinations. In view of this the members need to have a good knowledge on procedural laws.

2002 amendments brought in many changes to the Act and one of the most significant changes is allowing the lay members to preside over the proceedings and pass orders in the absence of President. In absence of President the seniormost member is given the charge of the Forum as in-charge President. It requires both administrative skills and legal skills. The member who is made in-charge President ought to

know various administrative aspects of the Forum as well as the legal aspects of admitting a complaint till the disposal. As the President looks after these aspects the lay member does not have chance to acquaint himself with those aspects. For instance only the President makes all the notings in the order sheet. Occasionally when the lay member assumes that responsibility he would be under a dilemma on the step that follows and what to write on the order sheet.

Similarly, the lay member may have to struggle hard for writing orders independently. Arriving at just conclusions may be easy but writing orders is not that easy. In order to develop the art of writing orders a profuse reading of law journals is necessary. Most importantly developing communication skills in English language is a must. The order must communicate the mind of the adjudicator without any ambiguity. In view of the above, performing the duty of a member of Consumer Forum is a challenging task and as such the member has to rise to the occasion. It should not be forgotten that the member's performance is gazed by consumers, businessmen as well as legal professionals. The endeavor should be to fit oneself into the legal framework in consonance with the spirit of the Act.

But in the present justice delivery system, in which the pendency of cases is mounting up, people started blaming the procedures as cause of delay. Though efforts have been made to amend these procedural laws to cut down the delay, there is no appreciable change in the disposals. In order to provide speedy justice, alternative dispute resolution system is evolved, which led to the creation of various tribunals. Now the emphasis is on to remove technicalities *vis-à-vis* procedural laws, whenever and wherever possible. Consumer Protection Act is specially designed to provide justice to consumers as expeditiously as possible. In order to overcome delay the

superior courts delivered orders stating that all the provisions of CPC are not applicable to the disputes before Consumer Disputes Redressal Agencies. Even for that matter all the rules of Evidence Act are also not applicable to the proceedings before the Consumer Forums. But the National Commission held that only sound principles of CPC are applicable. The sound principles of CPC, which are applicable to the consumer disputes, depend on the facts and circumstances of each case. Thus the provisions of CPC which are not specifically mentioned in the Consumer Protection Act, may also be taken into consideration.

However, the fact remains that the procedural laws provide foundation to the proceedings before any judicial authority. Hence, those performing judicial functions or quasi-judicial functions need to know the procedural aspects to conduct the proceedings in a proper manner. In order to accept or reject an application filed by a party the procedural laws would enable the persons performing judicial functions to arrive at a decision. This theoretical background would enable members to dispose of the matter with confidence. As the saying goes “Theory without practice is useless whereas practice without theory is blind”. Hence knowledge on various relevant provisions of CPC, CrPC and Evidence Act would provide proper foundation to the members to perform their obligations judiciously.

Procedures are necessary not only in judicial aspects but also in administrative and legislative aspects. Without establishing proper procedures it will be very difficult to conduct proceedings and confusion prevails. If people know the rules of the game, the game can be played without confusion. Keeping this in view the procedural laws are drafted from the time tested practices that are in vogue before the judicial authorities. These procedural laws guide both the judicial

authorities and legal practitioners on how to go about in a particular situation for a smooth conduct of judicial proceedings. In absence of such procedural law there will be disorder and chaos. Consequently every judgment or order gets challenged in an appellate court questioning the validity of such judgment or order made. If procedures are established and if they are not followed there will be a chance to point out the illegality of such proceeding. If no procedures were established then it would become a tale of four blind men describing an elephant.

Lack of experience of 'other members' in judicial procedures should not cause injustice to the parties. Further the binding precedents are causing the Consumer Fora not to apply all the provisions of CPC but only the sound principles and it was even held that all the rules of Evidence Act are not applicable. Under these circumstances, the non-experienced or less experienced members may not learn and follow the procedural laws. It might be the case with rules relating to evidence. Hence, it is very much necessary to know the procedural laws and their impact on the matters for adjudication before the Consumer Forums. Similarly all the rules of evidence may not be applicable to the cases before the Forums or Commissions. At least to learn the sequence in which the evidence has to be taken and what type of evidence should not be accepted, the members must acquaint themselves with such rules. Similarly for entertaining petitions for enforcement of the order, an understanding on procedural laws is a must. In case of penalty petitions CrPC would come into play, To decide these matters, the members need to know the provisions of CrPC.

Consumer Disputes Redressal Agencies are expected to provide suitable compensation to the consumers to the extent of damage suffered. There are no guidelines provided

on how to arrive at the quantum of compensation in the Act except in cases in which the loss has been suffered by a large number of consumers. Section 14(1)(*hb*) provides a minimum compensation of 5 per cent of the value of goods or services. Of course, there are some binding precedents on this matter. The quantum of compensation to be awarded is exclusively at the discretion of the Forums. This discretion cannot be used perfunctory. Depending on the facts and circumstances of each case the quantum of compensation is to be decided. The decisions of higher courts would provide guidance to a greater extent on this subject.

Certain provisions of the Act and the rules framed thereunder govern the appointment and removal of members. The Act contains provision for appointment of members to the Consumer Disputes Redressal Agencies. Similarly the rules contain provisions for removal of members. Eventually the members are expected to know the provisions that govern them in discharge of their duties. No one can discharge his/her duties properly without knowing what he/she is supposed to do and what he/she should not do. From application to resignation several rules are framed. One has to scrupulously follow them to fit into the framework of Consumer Protection Legislation.

Order is the outcome of the adjudication of consumer dispute. Preparing the order is a crucial job for any member. In addition to the knowledge of judicial procedures he must also acquire the Art of writing orders. It is necessary to understand whether all the three should sign the order or any of them can refrain from signing the order, when the order becomes invalid, whether each one of them can write separate order etc. Other than the provisions enshrined in the Act, there are several other aspects, which are to be observed by the members for conducting the proceedings in a decent and dignified manner. It is not only important that justice to be

done, but is also more important that justice seen to be done undoubtedly and manifestly. In order to create this ambience no member should transgress the limits of decency.

According to 2002 amendments the senior members may get a chance to become in-charge presidents of the Consumer Forums. In such a case it is necessary for them to acquire administrative skills to manage the affairs of courts of law. Administrative functions include maintenance of judicial records, disbursement of salaries, maintenance of accounts, admission of complaints etc. Rules relating to adjournments, steps to be taken in judicial proceedings are some of the vital issues the presiding members have to be familiar with.

But at the same time, the members must bear in mind that they should not resort to too much of technicality while adjudicating consumer disputes. The very purpose of appointing lay members in the Consumer Forums is to remove hyper technicalities. If they cannot really remove these hyper technicalities by relying too much on the procedures the very purpose of the enactment gets defeated. The knowledge of procedural laws would provide required strength to members for the conduct of judicial proceedings.

The legislative intent is very clear that these consumer disputes redressal agencies shall have a new ambience different from that of the regular courts, where, for obvious reasons dispensation of justice has become complicated and delayed. The Indian Parliament in its wisdom made a sincere effort to remove the shackles of technicalities by appointing non-technical persons for adjudication of consumer disputes. This is one way to provide simple, speedy and inexpensive justice. Members without judicial background are expected to create an ambience in which the consumers can seek redressal without botheration of technicalities. But how far these members who are new to judicial work transact such legal matters, with

confidence, freely with the President who is endowed with good amount of legal knowledge? Hence, it is necessary for these members to acquire required understanding and knowledge not only on procedural matters but also on writing meaningful orders. The basic necessity is to understand and appreciate the provisions of Consumer Protection Act.

How far it is appropriate to call the other members as lay adjudicators when they possess 10 years of experience in handling matter relating to economics, law, commerce, accountancy etc, which are also very relevant for resolution of consumer disputes? However, the fact remains that some of these members are not well acquainted and experienced in judicial proceedings particularly in appreciating procedural laws. In this respect these members may not have knowledge as possessed by Presidents such as the District Judge, High Court Judge or Supreme Court Judge, as far as the legal aspects of the adjudication are concerned. In view of this, these members should endeavour to acquire adequate knowledge regarding the conduct of proceedings before the Consumer Disputes Redressal Agencies constituted under the Consumer Protection Act, 1986.

The Chapters that follow contain information that is essential to the inexperienced members. This is not a commentary on Consumer Protection Act but a practical guide to the members, aspirants of the post of members, budding legal professional and consumerists who wish to have insight into the proceedings of Consumer Forums and the provisions relating to Consumer Disputes Redressal Agencies.

THE MEMBER

In the principal Act the term 'Member' was not defined. But in 1993 amendments a definition to 'Member' is provided by inserting clause (jj) to Section 2(1) according to which 'Member' includes the President and member of the National Commission or a State Commission or a District Forum, as the case may be. It ensures independent status to every member. In other words 'other members' are not subordinates to the President. The President presides over the bench and looks after the administrative work of the Redressal Forum. In any case the President's administrative powers should not usurp the quasi-judicial freedom of the member. To safeguard the freedom of members it is incorporated in Consumer Protection Rules that the terms and conditions of the service of the President and the Members of the Consumer Forums shall not be varied to their disadvantage during their tenure of office. It is important to mention at this juncture the procedure for the removal of the President or Member, which prevents the State Government from acting on any extraneous ground or arbitrarily. This precaution is taken with a view to secure the independence of the Redressal Forums. Though six disqualifications are mentioned for appointment of Members under Section 10(1) there is no specific provision for the removal of the Member. But the Consumer Protection Rules, 1987 under

Rule 12 relating to the terms and conditions of service of the President and Members of the National Commission it is mentioned that the President or any other member may be removed from his office in accordance with the provisions of Rule 13. Rule 13 prescribes only those disqualifications enlisted under Section 10(1) of the Act. The Member shall not be removed from his office on the ground that he has acquired financial interests, which are likely to affect prejudicially his functions, or has abused his position, except on an enquiry held by Government in accordance with such procedure as it may specify in this behalf. But some states adopted in their Consumer Protection Rules, a clause that any Member remained absent for three consecutive sittings of the District Forum without reasonable cause may be removed from the office. But this rule is not made applicable to Members of the State Commission.

Role of a Member

The role of a Member, in implementing the legislation true to its spirit and word and in providing better protection to consumers, need not be overemphasized. Individually it is the member and to repeat, member only who can ensure consumer-friendly ambience in the Redressal Forum by removing hypertechnicalities in the procedures. This can be done only in co-ordination with the rest of the members. If the issues in any particular case are not discussed by the Members in camera, the result of the adjudication may not serve the ends of justice. Hence, it is necessary for Members including President to share their views on any point or points before arriving at a decision. When there are three individual persons each having his own perceptions there bound to be perceptual differences. These differences can be narrowed down only by continuous discussions and co-ordination. President being a

person of rich experience in judicial matters there may not be much difficulty in appreciating legal provisions. But it is not the case with other members. Hence, a duty is cast on these members to learn the work from the President on one side and to be cautious not to become a silent spectator to the proceedings on the other. Unless all the members actively participate in the proceeding, the litigant public may feel that these silent spectators are not so important and it is a one-man show. It is not only necessary to actively participate in the proceeding but equally important to evince interest in writing orders. The Presidents are allotting mostly uncontested matters to *Other Members* for writing orders.

Perforce of habit some Presidents keep themselves in isolation and may be reluctant to discuss freely with other Members. In such a case there will be no free flow of communication between *Other Members* and President. It becomes hindrance to the team spirit as envisaged by the Act. The Forum must have a congenial atmosphere in which all the three Members should work in team spirit for the protection of consumers. It is also necessary to delegate some of the administrative powers of the President to other Members to enthuse them. Otherwise, there is an imminent danger that these Members may feel alienated. It is further necessary to adopt the scientific principles of management in the teamwork. In a small team like this any hassle in communication is undesirable. It goes without saying that President is the leader of this team who is necessarily to exhibit his leadership qualities in taking the rest of the Members along with him in adjudication process as well as in the administrative functions. The success of the team depends on how the leader motivates. This even would enable the Forum to dispose of maximum number of cases per month provided if adequate staff members are appointed.

After 2002 amendments, the senior Member is also given charge of the Forum as in-charge President. It is better for the Members to acquire the leadership qualities and team spirit. It is the duty of the President to create friendly ambience in the Forum, which promotes discipline, and dignity in the Forum. The other Members are also required to assist the President right from the time of scrutinizing the complaint for admission till finally the complaint is disposed of. As the President writes majority of the orders, naturally he would be busy in dictating the orders. In such a case he may not be able to concentrate on the administrative functions. The Member with the permission of the President may assist him in some of his administrative works in order to exhibit the team spirit.

Definition of Member

‘Member’ includes President and member of the National Commission, State Commission or a District Forum, as the case may be. President of the District Forum must be a sitting District Judge or retired District Judge. As regards other members, one of whom shall be a woman, must be not less than 35 years of age and must possess a bachelor’s degree from a recognized university. Further they must be persons of ability, integrity and standing. These members must also have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Disqualifications

The members are disqualified for appointment in the event of they –

- i) are convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude, or

- ii) are undischarged insolvents, or
- iii) are of unsound mind and stands so declared by a competent court, or
- iv) are removed or dismissed from the service of the Government or a body corporate, owned or controlled by the Government, or
- v) have, in the opinion of the State Government such financial or other interest as is likely to affect prejudicially to discharge the functions as members, or
- vi) have such other disqualifications as may be prescribed by the State Government.

Selection Process

Persons having required qualifications as stated above, may apply for the post of Member against notification issued by Registrar, State Commission/National Commission for the category (male/female) of the member who is required to be appointed. A written examination is held for the candidates in aspiring for the post and the top three candidates are short-listed, depending on their performance in the examination. An interview will be held to those selected candidates by a selection committee consisting of the following namely, the President of the State Commission (Chairman), Secretary, Law Department of the state and Secretary-in-charge of the Department dealing with consumer affairs in the State. By reason of absence or otherwise, the President of the State Commission is unable to act as Chairman of the Selection Committee, the State Government refers the matter to the Chief Justice of High Court for nominating a sitting judge of that High Court to act as Chairman. The State Government on the recommendation of the selection committee shall appoint the candidate thus selected. The government may obtain intelligence report about the antecedents of the selected

candidate before appointment.

Undertaking

The candidate appointed as member is required to give an undertaking, before assuming his office as member to the effect that he does not and will not have any such financial or other interests as is likely to effect prejudicially his functions as such member.

Resignation

A member may resign his office in writing under his hand addressed to the State Government. His office shall become vacant after government accepts his resignation. There is no need to mention the reasons for tendering resignation.

Entitlement

In case of members of District Forum and State Commission the State Government prescribes the salary or honorarium and other allowances payable to them. As regards the salary or honorarium and other allowances payable to members of the National Commission Rule 11 of Consumer Protection Rules, 1987 is applicable. As per this section the President of the National Commission is entitled to salary, allowances and other perquisites as are available to a sitting judge of the Supreme Court. Other members get consolidated honorarium of Rs.15,000. The President and the members of the National Commission shall be entitled to travelling and daily allowances on official tours at the same rates as are admissible to Group 'A' Officers of the Central Government. With regard to members of the District Fora and State Commission it varies from state to state but many states allowed rates as are admissible to Grade I Officer of the State Government. Further the terms and conditions of service of

the President and the Members shall not be varied to their disadvantage during their tenure of office.

Responsibility

The President or any Member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of any organization, which have been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.

Term of Office

The Members of the District Forum shall hold office for a term of five years or up to the age of 65 years whichever is earlier. Members of State Commission also hold office for a term of five years or up to the age of 65 years, 67 years and 68 years depending on the State Rules, whichever is earlier. But every Member of the National Commission shall hold office for a term of five years or up to the age of 70 years whichever is earlier and shall not be eligible for re-appointment.

Protection of action taken in good faith by members: Members of the Consumer Forums are protected under Section 28 of the Act for any thing done in good faith or for executing any order made by the Forums. No suit, prosecution or other legal proceedings shall lie against the members in respect of above actions.

A person who occupies judicial or quasi-judicial office is bound to acquire adequate knowledge on legal principles and procedural aspects to carry out his assignment judiciously and in a dignified manner.

Co-ordination amongst Members

Persons of different vocations, different experiences,

and different perceptions are selected as members of District Forums, State Commissions and National Commission. While the Presidents are chosen from judiciary, the rest of the members are mostly without judicial background. Members without judicial background are in majority. Section 14 (2A) states that the opinion of the majority shall be the order of the District Forum. As a result persons not having judicial background, who are in majority, can make a valid order against the opinion of President having good legal knowledge and judicial experience. Under these circumstances application of legal provisions may likely to take back seat whereas the opinions of the lay members are likely to prevail. Hence, it is necessary to strike a balance between statutory provisions and social justice. Law alone cannot bring social justice unless the provisions are interpreted in such a way to achieve the desired goal of that particular legislation. Member with judicial background may harp on technicalities whereas the lay members may ignore some legal provisions in a hurry to interpret the provisions in favour of consumer. At times it may be fatal to the cause of justice if lay member interprets the provisions of the statute in favour of a complainant who is not a consumer. Whether the complainant is a consumer, whether the Forum has jurisdiction, whether the complaint is barred by limitation and many more questions of this nature are well answered only by statutory provisions. This is where the lay member, particularly, should exercise some restraint in jumping to the conclusions without discussing the matters with the other learned members. In view of this, there is need to establish proper and perfect co-ordination amongst members to come to right conclusions to meet the ends of justice. This co-ordination can be achieved by following certain steps.

What is co-ordination? Co-ordination is nothing but sharing the ideas with one another to achieve better results as

a team. Even in single judge courts, the judicial officer must have proper co-ordination with people working under him to avoid delay, confusion and wastage. Similarly the Presidents of these Fora must have co-ordination with the rest of the members along with those working in the Fora and more so with advocates. President, in management parlance, is a team leader, who is to enthuse, motivate and train the other members to achieve the desired goals of Consumer Protection Act. President, being an experienced member of the team and also the administrative head must shoulder the responsibility of co-ordination amongst members. The President should invariably take up all the functions of a manager such as planning, co-ordination, and motivation etc. in order to achieve improved performance. It requires a paradigm change in the mindset of the judicial officers. The following may be practised to achieve proper co-ordination:

1. The members should sit together before going to the bench and immediately after the bench for a better understanding and consensus on the issues involved in the cases to be heard or heard on that day.
2. Every member should read the complaint before it is admitted for a better appreciation on office objections.
3. Circulars received from State Commission or National Commission on procedural aspects should be discussed amongst members.
4. At least once in six months the members jointly must hold a co-ordination meeting with staff.
5. Similar co-ordination meetings must be held with members of the bar.
6. Order dictated by one member should be circulated to other members well in advance and discussion may be held on the points of difference.

7. Co-ordination meetings with consumer organizations would help the members to create consumer-friendly ambience in the Forum.
8. Whenever there is a landmark decision of a superior court, reported in law journals, the members should take notice of the principles laid down in that decision and have a discussion in one of their regular co-ordination meetings.
9. At least once in a month the President should endeavour to impart some legal knowledge to the other members such as procedural laws or provisions relating to other laws serving the consumer interests.
10. Members should take co-ordinated effort for improving the facilities like library, computer, internet etc. President should give an opportunity to the rest of the members to learn the administrative functions of the President.
11. Even on the bench, the Presiding Officer should try to elicit opinions of other members in order to give an impression to the advocates and litigant public that the bench is working harmoniously in co-ordination. Giving an appearance of one man show, when there are three members conducting the proceedings, is not in consonance with the spirit of the legislation.
12. It is also necessary that the lay members should ask the permission of the presiding officer before they seek clarifications from the parties during the trials. More co-ordination is required under such circumstances, otherwise it becomes a cross-talk and advocates get confused on whom to be answered first.

Administrative Work in the Forum

By 2002 amendments *Other members* are given

opportunity to preside over the bench. Thus, President in-charge (member) has a duty to take care of the administration of the Forum. Administrative functions include maintenance of various judicial records, payment of salaries, issuing warrants, sending periodical reports to State Commission, issuing cheques to the parties, sanctioning of staff leave, maintenance of accounts etc. The various administrative aspects are briefed as under. Though some of them need not necessarily be looked into by the President, it is necessary to know these aspects to have control over the matters.

Administrative Functions

I. Administration of Office

- (a) Maintenance of Attendance Register
- (b) Maintenance of Leave register of Members and employees
- (c) Payment of bills such as electricity, telephone etc.
- (d) Maintenance of office stationery
- (e) Maintenance of equipment like computers, Photostat copier etc.
- (f) Payment of salaries
- (g) Maintenance of discipline
- (h) Maintenance of Service registers of employees
- (i) Maintenance of Inward Register
- (j) Maintenance of Stamp Account Register
- (k) Maintenance of Dispatch Register
- (l) Maintenance of S.R. Register
- (m) Register of complaint.

II. Reports to State Commission

- (a) Filing, disposal and pendency statement – monthly, quarterly and half -yearly

- (b) Yearly budget proposals (Number Statement)
- (c) Monthly reconciled expenditure statement
- (d) Forwarding leaves applied by Members to State Commission
- (e) Confidential reports relating to employees and members (yearly)
- (f) Sending records relating to matters appealed
- (g) Sending receipts and expenditure statement
- (h) Statement of orders pronounced and cases reopened

III. *Financial Administration*

- (a) Permanent Advance Register and recouping of permanent advance
- (b) Maintenance of acquittance register
- (c) Cash disbursement register
- (d) Undisbursed cash register
- (e) Maintenance of P.D. Account register
- (f) Maintenance of Court fee register
- (g) Cheques issuing register
- (h) Register of deposits made in the name of complainants.

IV. *Library*

- (a) Maintenance of Library books Inward register
- (b) Issue of books register
- (c) Indenting for new books
- (d) Periodical verification of issue register.

V. *Judicial*

- (a) Maintenance of C.C. Register
- (b) Maintenance of P.P. Register
- (c) Maintenance of I.A. Register
- (d) Maintenance of complaints disposal Register
- (e) Maintenance of E.P. and E.A. Register

- (f) Maintenance of Warrants issue register
- (g) Maintenance of copy application register
- (h) Maintenance of 'Appointment of Commissioners' Register
- (i) Maintenance of Return of documents and complaints register
- (j) Upkeep of Record Room
- (k) Indexing of disposed records
- (l) Maintenance of Appeal Intimation Register
- (m) Maintenance of record of Material Objects
- (n) Maintenance of record of Material Objects sent to appropriate laboratory
- (o) Register for allotment of CCs for writing orders by each Member
- (p) Maintenance of A-Diary
- (q) Maintenance of Hearing Book

CHEQUE PETITIONS

Parties may file petitions for receiving cheques from the Forum for the amounts deposited in their favour by other parties. In such a case office must check the following and put up the matter before President for his approval:

1. Whether there was any stay granted by the higher authority?
2. Whether the amount is credited to the account of the Forum?
3. Whether the signatures of the parties are tallying?
4. Whether full satisfaction or part satisfaction memo filed?

Account payee cheque shall be given to the parties if the deposit was made in the account of the Forum.

The Forum would observe whether the party followed the following rules:

1. Cheque petitions must contain affidavit and petition
2. F.S./P.S. Memo should be filed
3. Advance Receipt should be filed
4. Order of the State Commission/National Commission if any passed for withdrawal of the amount must be filed
5. Notice must be given to the other side before filing the petition
6. If there are more than one petitioner, separate affidavits shall be filed, authorizing one person to receive the amount on behalf of others
7. Payment schedule shall be filed.

Precautions to be taken while allowing the petitions:

Sometimes the State Commission may indicate that the party should submit a bank guarantee for withdrawal of the amount. The bank guarantees are given for a specific period. The Forum should see that the consumer renews the bank guarantee from time to time till the matter is finally disposed off.

Useful References

R.S.Kulshrestha *vs.* State of U.P. & Ors I (2004) CPJ 273 (DB) Allahabad High Court held that President of U.P.State Commission not empowered to suspend or order any enquiry against President of District Forum.

Arati Das *vs.* State, Orissa High Court IV (2005) CPJ 141.

Petitioner after appointment as Member of District Forum continued to be agent of LIC. In view of this, the State Government removed petitioner as Member. It is argued before Orissa High Court that removal of Member cannot be contemplated by Government alone since the appointment of member is made on the recommendation of a selection committee. Orissa High Court held that the State Government is empowered to appoint and remove member of Forums.

In Sanjay Upbhokta Shakti Sanghtan *vs.* Govt of Rajasthan, the Rajasthan High Court issued a mandamus to the State of Rajasthan to fill up all the vacancies of Presidents and Members in the District Forums within three months from 9.4.2001 as reported in III (2001) CPJ 47 (DB).

THE CONSUMER PROTECTION ACT

Backdrop of Consumer Protection Legislation

In order to understand the spirit of the legislation one should necessarily study the objectives of Consumer Protection Act. While introducing Consumer Protection Bill into the Parliament the Members of the Parliament were briefed about the intention of introducing the Bill, which is as follows:

The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for that purpose, to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith as stated in the Preamble of the Act. The object of the Bill is to promote and protect the rights of consumers such as right to be protected against hazardous goods and services, right to information, right to choose, right to represent consumer's interests, right to redressal and right to consumer education. But this responsibility is placed on Consumer Protection Councils established at the Central, State and District level. Further, it is stated that in order to provide speedy and simple redressal to consumer disputes, quasi-judicial machinery is sought to be set-up at National, State and District level. These quasi-judicial bodies shall observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award

compensation to consumers. Penal provisions are also provided for non-compliance of the orders given by these quasi-judicial bodies. As observed by Supreme Court

“The law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory”.

The above observations of the Apex Court would reveal the onerous responsibility placed on the machinery established *vis-à-vis* the members of the redressal agencies to implement the spirit of legislation for the benefit of the common man. Thus becoming a member of the redressal agency is neither securing employment nor status but a noble responsibility accepted to serve the common man, who is a consumer, to the best of his ability. Protecting a common man from hazardous goods, Unfair Trade Practices, exploitation, fraud etc., is not an easy task. One has to work with devotion, and dedication to provide better protection to consumers. It is also desirable to know the backdrop in which the Consumer Protection Act was passed, to have a better appreciation of the provisions of the Act. In United Nations General Assembly, a consumer protection resolution No.39/248 was passed and India is a signatory to this resolution. The UN had passed a resolution in 1985 indicating certain guidelines under which the Governments could make laws for better protection of the interests of the consumers and such laws were more necessary in developing countries to protect the consumer from hazards to their health and safety and to make them available speedier and cheaper redress. With this background the 1986 Act was enacted. Consumer Protection has been an increasing public concern in the recent years because consumers are becoming victims of many unfair and unethical trade practices. Many of the consumers know little about the modern goods. Goods

produced in other countries are flowing into India. Marketing of goods is done without boundaries due to globalization of economy.

United Nations General Assembly discussed these issues and adopted guidelines for protection of consumers on 9 April 1985. These guidelines provide a framework for governments to use in elaborating and strengthening consumer protection policies and legislation. The objectives of the U.N. Guidelines for consumer protection include:

1. to assist countries in achieving or maintaining adequate protection for their population as consumers.
2. to facilitate production and distribution patterns responsive to the needs and desires of consumers.
3. to encourage high levels of ethical conduct of those engaged in the production and distribution of goods and services to consumers.
4. to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers.
5. to facilitate the development of independent consumer groups.
6. to further international co-operation in the field of consumer protection.
7. to encourage the development of market conditions which provide consumers with greater choice at lower prices.
8. the legitimate needs which the guidelines are intended to meet include the protection of consumers from hazards to their health and safety; the promotion and protection of the economic interests of consumers and the availability of effective consumer redress.

Thus, whoever takes up the responsibility of protecting

consumers, like members of the Redressal Agencies, constituted under Consumer Protection Act, should know the mechanics of consumer protection as suggested in U.N. Guidelines. The legitimate needs of consumers as expressed in U.N. Guidelines are as follows:

- (a) The protection of consumers from hazards to their health and safety.
- (b) Promotion and protection of the economic interests of the consumers.
- (c) To provide them adequate information to make informed choices.
- (d) Consumer education.
- (e) Availability of effective consumer redress.
- (f) Freedom to form consumer groups and providing them opportunity to present their views.

U.N. Guidelines motivated many countries to enact suitable laws for consumer protection. Many of the consumer protection legislations made worldwide reflect the objectives of these guidelines. Hence, these guidelines have remarkable influence on the systems devised for consumer protection.

Indian Parliament has enacted this special law, namely, the Consumer Protection Act, because the existing laws are inadequate and fell short of expectations due to loopholes and poor enforcement. At this juncture it is important to know various legislations that provide protection to public as consumers. The following are some of such legislations;

1. Public Provident Fund Act, 1968
2. Railway Claims Tribunal Act, 1987
3. Indian Contract Act, 1872
4. Indian Penal Code,
5. Banking Regulation Act,
6. Negotiable Instruments Act, 1881

7. Reserve Bank of India Act,
8. Indian Companies Act, 1956
9. Apartments Act,
10. Chit Fund Act,
11. Sale of Goods Act,
12. Environment Protection Act,
13. Prevention of Food Adulteration Act,
14. Indian Medical Council Act,
15. Essential Commodities Act,
16. Standards of Weights and Measures Act, 1976
17. Bureau of Indian Standards Act,
18. Civil Procedure Code, 1908
19. Criminal Procedure Code, 1973
20. Competition Act, 2002
21. Arbitration Act, 1972
22. Carriage by Air Act, 1972
23. Carriers Act, 1865
24. Constitution of India, 1950
25. Standards of Weights and Measures (Packaged Commodities) Rules, 1977
26. Telegraph Act,
27. Indian Post Office Act, 1898
28. Insurance Act, 1938
29. Electricity Supply Act,
30. Usurious Loans Act,
31. Agricultural Produce (Marking and Grading) Act,
32. Prevention of Black Marketing Act,
33. Cinematography Ac.

It is not unusual that the contesting parties may refer to the provisions of the above legislations. As redressal of consumer grievances by Consumer Forums is described as additional remedy, and the provisions of Consumer Protection Act should not be applied in derogation to any other law, the

members are required to know the salient features of the above-referred laws. There is good number of disputes filed before the Consumer Forums relating to which special enactments are made. Invariably, the provisions of such Acts come up for discussion during trials. This necessitates the members to learn the impact of such provisions to the case on hand. Some legislations even may oust the jurisdiction of other courts. Further, special laws govern all the public utility undertakings and as such matters relating to such disputes are to be resolved in consonance with the spirit of those laws.

Spirit of Consumer Protection Act

As per the Preamble Consumer Protection Act is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The words 'better protection' are used probably with a view that the existing laws are not adequate and fell short of protecting the interests of consumer and further to emphasize that this enactment should ensure better protection.

The observations of Supreme Court reveals the need of Consumer Protection Act in the present scenario and also fix up the task of accomplishing the avowed objects of Consumer Protection Act on the Consumer Disputes Redressal Agencies constituted under the Act. The Supreme Court further observed that the provisions of the Act, thus, have to be construed in favour of the consumer to achieve the purpose of the enactment, as it is social benefit-oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

At this juncture a reference to the statement of objects and reasons stated for enacting Consumer Protection Act is useful to understand the spirit and scope of the legislation.

Statement of Objects and Reasons

1. The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.
2. It seeks, *inter alia*, to promote and protect the rights of consumers such as,
 - (a) the right to be protected against marketing of goods and services which are hazardous to life and property;
 - (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices;
 - (c) the right to be assured, where ever possible, access to variety of goods and services at competitive price;
 - (d) the right to be heard and to be assured that consumers; interests will receive due consideration at appropriate forums;
 - (e) the right to seek redressal against unfair or restrictive trade practices, or unscrupulous exploitation of consumers; and
 - (f) right to consumer education.
3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and state level

4. To provide speedy and simple redressal to consumer disputes, quasi-judicial machinery is sought to be set-up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumer. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

The members must ascertain the spirit of legislation and the legislative intent through Preamble and statement of objects and reasons. Such an understanding on the spirit of Consumer Protection Act enables them to accomplish the objects and purpose of the legislation. Further while applying the provisions of this Act, the members should bear in mind that the provisions of the Act are in addition to the provisions of the other laws for the time being in force and not intended to apply in derogation to the provisions of any other laws. In *District Manager, Telephones, Patna & Anr vs. Dr. Tarun Bharguar & Anr* I (1992) CPJ 47 (NC) = 1991 (1) CPR 171 the National Commission held that the Consumer Protection Act gave the consumer an additional remedy besides those which might be available under other existing laws. The fact that disputes involving meter reading or excess billing can be settled under Section 7B of the Indian Telegraph Act does not therefore oust the consumers from seeking relief under the Consumer Protection Act.

The Consumer Protection Act, 1986

Government of India made an exhaustive exercise before the Consumer Protection Bill was introduced in the Parliament. Though legislative efforts to protect consumers started from 1985 itself in a few States like Madhya Pradesh, Karnataka

and Delhi, the idea for a central legislation was ignited by the UN guidelines for Consumer Protection. On receipt of these guidelines Government of India held discussions with various interest groups including trade and industry, educationists, consumer groups, Chambers of Commerce etc., and accordingly, Consumer Protection Bill was introduced and received the approval of Parliament. It received the assent of President of India on 24.12.1986 and came into force on 1 July 1987. Twenty-fourth December is a red-letter day in the history of Indian consumerism and observed as a National Consumers day.

Consumer Protection Act, 1986 is considered as one of the most benevolent welfare legislations. It not only recognizes six consumer rights but also provides time frame for settlement of consumer disputes by the Consumer Disputes Redressal Agencies (Redressal Forums) established under the Act. It is strongly believed that this legislation is the best of the legislations made in other parts of the world for consumer protection. No other welfare legislation in India has such a wider reach as Consumer Protection Act. This Act applies to all goods and services unless otherwise exempted by Government of India. In the short period of its existence this Act has been amended thrice in 1991, 1993 and 2002. Government of India is contemplating on further amendments and also gave notification requesting consumers to suggest amendments. In this respect also Consumer Protection Act is considered unique because no other law has been amended so many times in such a short period. These amendments are aimed at removing the difficulties in the implementation of the Act and make it more effective.

The authority established under the Act is known as Consumer Disputes Redressal Agencies (consumer courts). It is a three-tier judiciary established at National, State and District levels. In contrast with ordinary civil courts where

the speedy justice is a distant possibility the three-tier judiciary established under the Act has its focus on simple, speedy and inexpensive justice. The adjudicatory authorities established are National Commission, State Commission and District Forum at national, State and district levels respectively. Thus a separate judicial system has been established to protect consumers. In *Lakshmi Engineering Works Ltd. vs. PSG Industrial Institute*, the Supreme Court has observed that the District Forums, State Commissions and National Commission are not courts but are quasi-judicial tribunals.

The significance of this Act has been described by Supreme Court in *Lucknow Development Authority vs. M.K.Gupta* [III (1993) CPJ 7] in the following words;

“ In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law, for various reasons, has become illusory. Various legislations and regulations permitting the state to intervene and protect interest of consumers have become a haven for unscrupulous ones as the enforcement machinery does not move or it moves ineffectively, inefficiently and for reasons, which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘a net work of rackets’ or a society in which, ‘producers have secured power’ to ‘rob the rest’ and the might of the public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility, but for extraneous considerations leaving

the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot.”

Preamble declares the object with which the enactment has been proposed and what it seeks to accomplish. Preamble assumes active role in case of any ambiguity in the interpretation of a provision in the statute. It is necessary to have a look at the Preamble as it unfolds the mind of the Parliament.

“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”

In Secretary, Tirumurugan Co-operative Agrl. Credit Society *vs.* M.Lalitha through legal representatives & Ors (2004 CTJ 1 SC)

The Supreme Court held that “having due regard to the scheme of the Act and purpose sought to be achieved to protect the interests of the consumers, better the provisions are to be interpreted broadly, positively and purposefully. In the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under the Acts unless there is clear bar”.

From the above it is clear that the Forums under the C.P. Act have jurisdiction to entertain a complaint though other Forums/courts also have jurisdiction to adjudicate upon the dispute (2004 CTJ 1 SC)

If there is any inconsistency between the terms of a rule framed under an Act and any of the provisions of the Act the Rule is null and void to the extent of such repugnancy.

Common Cause vs. Union of India I (1993) CPJ 1 (SC)

In this case the Supreme Court gave directions in 1989 to all States and Union Territories to constitute District Forums and State Commissions within six weeks. Again in 1992 in the same case the Supreme Court observed as follows: “to say the least the emerging scenario is far too depressing betraying a total lack of willingness on the part of the most of the States to seriously implement one of the most benevolent legislation. It is such indifference, which renders a well-meaning legislation intended to protect a large body of consumers from exploitation ineffective.”

In *VOICE vs. Registrar, Tamilnadu State Consumer Disputes Redressal Commission, II (2003) CPJ 33 (NC)* the National Commission held that when there were special two enactments, the latter enactment would prevail and in this case, the latter enactment was the Consumer Protection Act, 1986.

Salient Features of the Act

1. It facilitates consumers as defined in the Act, and the legal representatives in case of death of consumer, registered consumer associations, central or state governments to file complaints in the redressal agencies constituted under this Act. Matters relating to business such as goods purchased or services availed for commercial purpose do not come under the purview of the Act. Similarly disputes relating to employment do not come within the ambit of this Act. But goods purchased or services availed for the purposes of

earning livelihood by way of self-employment will not be regarded as commercial purpose.

2. The Act makes it mandatory to establish Central Consumer Protection Council (Central Council), by the Central Government, State Consumer Protection Councils (State Councils) and District Consumer Protection Councils (District Councils) by the State Governments in order to promote and protect the rights of consumers such as right to safety, right to information, right to choose, right to be heard, right to redressal and right to consumer education. The central council meets at least once in a year whereas the State Councils and District Councils will have two mandatory meetings every year. The Central and State Councils shall have the respective ministers-in-charge of consumer affairs as chairmen and for the district councils the collectors of the respective districts are the chairmen. These consumer councils consist of members drawn from government officials, consumer activists and other knowledgeable persons.
3. It establishes three-tier quasi-judicial bodies at the national, State and district level respectively known as National Commission, State Commission and District Forum. District Forums and State Commissions shall have three members including the president whereas the National Commission shall have minimum five members including the president. A provision has been inserted in 2002 amendments for the Constitution of circuit benches for both National Commission and State Commissions for quick disposal of pending matters and also to bring the justice delivery system closer to consumers. These quasi-judicial bodies are known as Consumer Disputes Redressal Agencies.

4. *Procedures are simple without much of technicalities:* The Act intends to follow simple procedures by the redressal agencies while adjudicating consumer disputes. In order to provide proper ambience for the consumers who approach these redressal agencies the procedures are simplified. There is no need to engage advocates and the consumers themselves can file cases before these courts. There is no need to quote the sections of the relevant legislations in the preparation of the complaint. The procedure adopted by these courts are summary in nature and as such there will be no elaborate recording of evidence or examination and cross-examination which might puzzle the consumer who may not engage an advocate. Only in some deserving cases elaborate recording of evidence and cross-examinations are permitted. The view of the lawmakers is very clear that there should not be high technicalities in the procedures in which the ordinary consumer has no knowledge. To remove the hyper-technicalities, lay members (members without judicial background) are appointed in majority to make these judicial authorities user- friendly.
5. *Inexpensive justice delivery system:* The lawmakers while codifying the law on consumer protection initially thought of dispensing with collection of any court fee from consumers for adjudication of their disputes. But by amendments made in 2002, payment of fees has been made compulsory. Accordingly the redressal agencies are collecting court fee on the value of the complaint and compensation sought for, as detailed hereunder:

| VALUE | COURT FEE (Rs.) |
|---|-----------------|
| Up to rupees one lakh | 100/- |
| Above one lakh and up to rupees five lakh | 200/- |
| Above 5 lakh and up to rupees 10 lakh | 400/- |
| Above 10 lakh and up to rupees 20 lakh | 500/- |
| Above 20 lakh and up to rupees 50 lakh | 1, 000/- |
| Above 50 lakh and up to rupees one crore | 2, 000/- |
| Above rupees one crore | 5, 000/- |

6. The orders pronounced by these redressal agencies are supplied to the parties free of charge. If the defective product requires laboratory analysis the consumer is to deposit such charges as collected by the laboratory, with the District Forum, State Commission or the National Commission, as the case may be.
7. *Speedy Justice:* The delivery of justice in the Indian courts is a delayed process and hence the lawmakers made an attempt, while drafting the Consumer Protection Act, to address this problem. It is categorically stated in the Act that the redressal agencies should endeavour to decide the complaint within a period of three months from the date of receipt of notice by the party against whom the complaint is made (Opposite Party) where testing of the product by an appropriate laboratory is not necessary and within five months if such laboratory analysis is required. The Act even imposes restrictions on giving adjournments liberally. If an adjournment is warranted in the interest of justice, the party asking for adjournment should show sufficient cause and the reasons for granting such adjournment should be recorded in writing by the consumer courts.

8. *Enforcement of orders:* There is no separate mechanism for the consumer courts to enforce their orders. Hence, the orders given by the consumer courts are sent to civil courts in whose jurisdiction the person against whom the order is given is residing or his properties are situated, for enforcement. In order to make the enforcement simpler a new procedure for enforcement has been stipulated by 2002 amendments. According to this new procedure the consumer courts are empowered to issue a certificate, for the amount due, to the collector of the district to recover the amount in the same manner as arrears of land revenue.

In case an interim order of the consumer court is not complied with, the property of the person not complying with the order shall be attached. Such attachment shall be in force for 3 months and at the end of which if non-compliance continues the property attached shall be sold for recovering the dues.

9. *Penalties:* Non-compliance of order also leads to imposition of punishment under the Act. Person who is not complying with the order of the consumer court is punishable with a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than Rs.2, 000 but which may extend to Rs.10, 000 or with both.
10. *Provision for granting compensation:* In many of the laws enacted prior to Consumer Protection Act, 1986 the main focus is on punishing the erring traders or manufacturers for violating the rule of law. But there is no relief for the consumer who becomes a victim of such unethical business practices or unlawful activities. There are no provisions for recompensing the injured. But under Consumer Protection Act, 1986 the consumer

courts are empowered to award compensation for any loss or injury suffered by the consumer due to the negligence of the seller, manufacturer or service provider. In contrast with various other laws this Act does not provide for punishment to negligent and erring businessmen but make them pay compensation for their wrongs, to the extent of damages suffered by the consumers and in deserving cases, even punitive damages are awarded to consumers

11. *Dismissal of frivolous or vexatious complaints:* In order to prevent abuse of Consumer Protection Act certain safeguards are provided. As per the provisions of this Act the frivolous and vexatious complaint is not only be dismissed, but the person who makes such complainant may be asked to pay costs to the other party, which may extend up to Rs.10, 000.
12. *Some important definitions:* Some of the definitions provided under this Act bear significance in making use of the provisions of the Act such as 'Consumer', 'Service', 'Unfair Trade Practice', 'Restrictive Trade Practice' etc. Basing on these definitions only an aggrieved consumer can get his complaint admitted in the consumer courts for adjudication.

Consumer: Consumer means any person who:

- (i) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment when such use is made with the approval of such person, but

does not include a person who obtains such goods for resale or for any commercial purpose; or

- (ii) Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

(Explanation: For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood, by means of self-employment)

Restrictive Trade Practice: “restrictive trade practice means a trade practice which tends to bring about manipulation of prices or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include –

- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
- (b) any trade practice which requires a consumer to buy, hire or avail any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services

Unfair Trade Practice: 'Unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts an unfair method or unfair or deceptive practice including any of the following practices, namely;

- (1) the practice of making any statement, whether orally or in writing or by visible representation which;
 - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade and composition, style or model;
 - (ii) falsely represents that the services are of a particular standard, quality or grade;
 - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represent that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) gives the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

- (viii) makes to the public a representation in a form that purports to be:-
 - (a) a warranty or guarantee of a product or of any goods or services; or
 - (b) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (x) gives false or misleading facts disparaging the goods, services or trade of another person.

Complaint: Complaint means any allegation in writing made by a complainant complaining of unfair or restrictive trade practice, defect in goods, deficiency in service, excess charging of price and hazardous goods.

Complainant: As per the definition Under Section 2(1)(b) where there are five types of complainants namely a consumer, a registered consumer association, Central or State

Government, one or more consumers, legal heirs in case of death of consumers.

Goods: Section 2(1)(i) of Consumer Protection Act says 'goods' means goods as defined in the Sale of Goods Act, 1930. As such one can not understand the meaning of 'goods' unless he makes a reference to Sale of Goods Act. Section 2(7) of the Sale of Goods Act defines Goods to mean every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. A decree under Section 3(34) of the General Clauses Act, is a movable property and therefore it is goods as decided in *Vithaldas vs. Jagjivan*, AIR 1939 Bombay 84. As regards shares the Supreme Court in *Morgan Stanley Mutual Fund case* (1994) II CPJ 7 (SC) held that till the allotment of shares takes place, the shares do not exist. Therefore, they can never be called goods before allotment. Money being a legal tender cannot be a subject matter of sale. Similarly the definition of 'goods' excludes 'actionable claim' which means (1) any unsecured debt (2) any interest in movable property not in position of the claimant. But definition of goods under MRTP Act includes products manufactured, processed or mined in India, shares and stocks including issue of shares before allotment and goods imported into India.

Services: Section 2(1)(o) of Consumer Protection Act defines 'service' as under

- i) Service of any description which is made available to potential users, and includes, but not confined to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the

purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

In Lucknow Development Authority *vs.* M.K.Gupta, the Supreme Court observed that the definition of service is of three parts namely, main part, inclusionary part and exclusionary part. The main part of the definition reads service of any description which is made available to potential users. In the inclusionary part some provisions of facilities in connection with banking, insurance, transport, entertainment etc. whereas the exclusionary party of the definition which keeps services rendered free of charge and under a contract of personal service out of the ambit of this definition.

Consumer Dispute: Consumer dispute means dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

Similarly complaint means any allegation in writing made by a complainant that

- an unfair trade practice or a restrictive trade practice has been adopted by any trade or service provider,
- the goods bought by him or agreed to be bought by him suffer from one or more defects,
- the services hired or availed of by him suffer from deficiency in any respect,
- a trader or service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price fixed by or under any law for the time being in force; or the price displayed on the goods or any package containing such goods; or the price displayed on the price list exhibited by him by or under any law for the time being in force; or the price agreed between the parties,

- goods which will be hazardous to life and safety when used or being offered for sale to the public in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; or if the trader could have known with due diligence that the goods so offered are unsafe to the public,
- services which are hazardous or likely to be hazardous to life and safety of the public when used, or being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.

If the goods in dispute are purchased for resale or for a commercial purpose such goods do not come under the ambit of Consumer Protection Act. But goods purchased for earning livelihood and self-employment do not come under goods purchased for commercial purpose.

Till the allotment of shares takes place, 'the shares do not exist'. Therefore, they can never be called goods before allotment.

Amendments made to Consumer Protection Act

Whenever amendments are proposed, the minister concerned makes a statement before the Parliament why such amendments are required. The objects stated would provide a clear understanding on the amended provisions and thereby pave way for effective implementation. Hence, it is necessary to understand the spirit of these amendments.

1991 Amendments

Within four years of its enforcement i.e., in 1991 the Consumer Protection Act was amended to provide clarification

that the proceeding of the District Forum, State Commission or the National Commission, as the case may be, can be conducted by the President and one member and not necessarily by all the members. The amendments mainly focused on filling up the vacancy in the office of the President. It is also made clear that the vacancies or defects in appointment shall not invalidate any act or proceeding of the Consumer Disputes Redressal Agencies.

1993 Amendments

The Act was further amended in 1993 basing upon the recommendation of the high power committee constituted by the Ministry of Civil Supplies and Public Distribution, Government of India. The prominent among the amendments made in 1993 are as follows;

1. Housing construction has been included under the definition of service.
2. The State Governments are empowered to establish more than one District Forum in a district.
3. Two years period of limitation was inserted for filing complaints before the redressal agencies. Redressal agencies have power to condone the delay on a sufficient cause.
4. Monetary jurisdiction of the District Forum has been enhanced to five lakh from one lakh.
5. The National Commission and the State Commissions were given administrative control over the lower Forums.
6. Redressal agencies are empowered to dismiss frivolous or vexatious complaints and also may impose costs on the complainant not exceeding Rs.10,000 payable to the opposite party.

2002 Amendments

The Act was amended for the third time in 2002 with a view to widen the scope of some of the provisions of the Act and to make it more effective. Some of the prominent amendments made in 2002 are as follows;

1. Prescribing time limits within which complaints are to be admitted, notices to be issued and appeals are to be decided.
2. Provision to restrict grant of more number of adjournments has been inserted and made it obligatory on the redressal agencies to record in writing the reasons for allowing adjournments.
3. The monetary jurisdiction of the District Forum has been enhanced up to rupees twenty lakh and of the State commission up to rupees one crore.
4. Provision for charging of fee for every complaint has been inserted.
5. A provision for deposit of fifty per cent of the amount due in terms of lower Forum's order by the person against whom such order is passed is mandatory for preferring an appeal.
6. Services availed for commercial purposes have been excluded from the purview of the Act.
7. Minimum qualifications have been prescribed for members of the Consumer Disputes Redressal Agencies.
8. Conferring the powers of a judicial magistrate of the first class on the consumer disputes redressal agencies.
9. Empowering the redressal agencies to issue interim orders.
10. Making it mandatory on the part of Central and State governments to establish Consumer Protection Councils.

Consumer Protection Councils

In the Preamble of the Consumer Protection Act, it is stated as follows;

“An Act to provide for better protection of interests of consumers and for that purpose to make provision for the establishment of ***consumer councils*** and other authorities for the settlement of consumer disputes.”

It is clear from the above Preamble that the Consumer Protection Act attaches much importance to Consumer Protection Councils on par with Consumer Disputes Redressal Agencies (Consumer Courts). Though these Consumer Protection Councils do not have powers like that of Consumer Courts still these Consumer Protection Councils are prominently mentioned in Chapter II of the Act. As per the Act these Consumer Protection Councils are to be established at National, State and District level. The objectives of these councils are to promote and protect the rights of consumers as enshrined in the Act.

The Central Consumer Protection Council

The Central Consumer Protection Council (Central Council) shall be established by the Central Government. It consists of both official and non-official members and the minister-in-charge of consumer affairs in the Central government will be the chairman. The members are drawn from government machinery as well as from the society particularly from the consumer movement and other resourceful persons having adequate knowledge in consumer problems. The Central Council shall meet at least once in a year and if necessary can meet more than once. Usually the Central Council meets at Delhi but can have its sittings in other places also if the chairman thinks it fit. The Central Council in its meeting

would discuss issues relating to consumer problems and recommend to government of India various aspects relating to consumer protection for removing the identified problems. The Central Council had 24 meetings so far since its inception and recommended several issues including amendments to the Act.

The State Consumer Protection Councils

The State Governments/Union Territories shall establish State Consumer Protection Councils (State Councils) in their respective states. As in the case of Central Council, State Council consists of official and non-official members and minister-in-charge of consumer affairs in the State will be its chairman. The members are drawn from various segments including consumer activists. The number of members to be appointed to this council will be decided by the State Government. The State Council shall meet twice in a year but can meet more than twice if the chairman deems it fit to convene more meetings than prescribed. It usually meets in the State capital but can give its sitting at any other place in the State if the chairman so decides.

The District Consumer Protection Councils

By 2002 amendments to the Consumer Protection Act it is made mandatory to the State governments to establish District Consumer Protection Councils (District Councils) in every district in their respective States. The District Council consists of members drawn from government machinery and from various segments of the society particularly from the consumer movement. The collector of the district shall be its chairman. The District Council should meet at least twice in a year, but can meet more number of times if the collector deems it necessary to convene more number of meetings. Provision for establishment of District Councils would give an

opportunity to discuss consumer problems at micro level.

These Consumer Protection Councils are required to identify the problems of consumers and to suitably recommend to the respective authorities to address such problems. As these councils are only recommendatory bodies and the governments may consider only such of those recommendations, which are essential. The Act has been amended thrice because of such recommendations. Though the Act recognized the consumer, registered consumer organizations, Central Government and State Governments to file complaints before the consumer courts such facility is not provided to these Consumer Protection Councils, though they have a statutory obligation to promote and protect the rights of consumers.

4

CONSUMER DISPUTES REDRESSAL AGENCIES

Chapter III of Consumer Protection Act contemplates establishment of three-tier quasi-judicial bodies to redress the grievances of consumers. As described in the Act, they are Consumer Disputes Redressal Agencies. The Agency that is established at the district level is Consumer Disputes Redressal Forum, at the state level State Consumer Disputes Redressal Commission and at the national level, National Consumer Disputes Redressal Commission known as District Forum, State Commission and National Commission respectively. In other words a separate judiciary is constituted to protect the interests of consumers. All the 29 sections of Chapter III of Consumer Protection Act contain the provisions relating to the quasi-judicial mechanism, which is said to be the backbone of consumerism. Procedures to be followed by Consumer Forums and the reliefs that can be granted to consumers are laid down in this chapter. The mechanism of these three-tier quasi-judicial bodies is as follows;

This Chapter deals not only with establishment of Consumer Disputes Redressal Agencies and the procedures to be followed but also deals with the removal of President

and Members, their salary/honorarium, conditions of service, etc. In view of this the Members ought to familiarize themselves with all the sections of this chapter. If the provisions enshrined in this chapter are not scrupulously followed there is an imminent danger for the orders of these Fora becoming invalid.

District Forums, State Commissions and National Commission are not courts but are quasi-judicial tribunals as held by the apex court in **Lakshmi Engineering Works Vs. P.S.G.Industrial Institute 1995 CTJ 289 (SC) (CP)**. The District Forums, State Commissions and for that matter even the National Commission are handicapped due to lack of suitable accommodation, adequate number of stenographers and other staff. Frustrated by the irresponsible attitude of several state governments in establishing the redressal agencies, the Delhi based voluntary organization filed a petition in the Supreme Court for giving directions to the State Governments for establishment of Consumer Fora. In this case the Supreme Court observed as under

District Consumer Disputes Redressal Forum:

The state government shall establish District Consumer Disputes Redressal Forums (District Forum) in each district. In case of heavy pendency of cases it can establish more than one Forum in a district to clear the backlog. Each District Forum shall Consist of three members one of them shall be a woman. A person who is qualified to be or has been a District Judge shall be its president. The rest of the two members are selected from other fields like economics, commerce, industry, accountancy, public affairs and administration. The non-judicial members should possess a bachelor's degree from a recognised university and must be less than thirty-five years of age. They should be persons of ability, integrity and standing having adequate knowledge in the fields

mentioned above. The appointment of the members are made on the recommendation of a selection committee consisting of President of the State Commission, Secretary, Department of Law in the State and Secretary in-charge of the department of consumer affairs in the state. Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years whichever is earlier.

District Forum is at the lowest rung of the hierarchy of Consumer Disputes Redressal Agencies and hence does not have appellate or administrative jurisdictions. Jurisdiction usually understood as territorial jurisdiction. But there are other types of jurisdictions such as pecuniary, appellate and administrative jurisdictions. However, District Forum has only territorial and pecuniary jurisdiction.

Territorial Jurisdiction:

Generally District Forum has jurisdiction extended to the entire revenue district. But in some districts there is more than one District Forum. In such a case the State Government earmark the territory allotted to each District Forum. In such a case each District Forum will have jurisdiction in the revenue divisions assigned to it. It is necessary to understand how the District Forum can exercise its territorial jurisdiction. If the opposite parties mentioned in the complaint reside or carry on business within the local limits of the District Forum or the cause of action, wholly or in part arises in territorial limits of the District Forum then only it can entertain such complaints.

Pecuniary Jurisdiction:

The District Forum is empowered to entertain complaints where the value of the goods or services and the compensation, if any claimed does not exceed rupees twenty lakhs. Thus the pecuniary jurisdiction is nothing but the monetary jurisdiction. The general belief is that the

value of a complaint is decided on the basis of the value of the property or services involved. But in consumer disputes, in order to evaluate the value, the amount claimed as compensation will also be added to the value of goods or services. Thus a dispute on Rupees twenty lakhs worth of goods in which the complainant claims compensation of Rupees One lakh, such dispute does not come under the jurisdiction of the District Forum because the value of the complaint including the compensation claimed is more than twenty lakhs. District Forum does not have jurisdiction to adjudicate the dispute where the value exceeds the pecuniary limits of its jurisdiction.

State Consumer Disputes Redressal Commission:

As discussed earlier each state will have a State Consumer Disputes Redressal Commission (State Commission). The State Commission shall consist of a President who is or has been a judge of a high court. The rest of the two members are selected as per the procedure explained in case of members of the District Forum. A member with judicial background (a retired district judge) can also be appointed as member of the State Commission. The term of office of the member of the State Commission is 5 years or up to the age of 67 years, whichever is earlier.

Jurisdiction:

State Commission will have territorial, pecuniary appellate and administrative jurisdiction. It has monetary jurisdiction above 20 lakhs and upto rupees one crore. There is no provision in the Act as to the territorial jurisdiction of the State Commission. As regards territorial jurisdiction, it will have the entire state under its jurisdiction. Further, it has jurisdiction to entertain appeals against the order of any District Forum within the state. State Commission also has administrative jurisdiction over District Fora within the state to call for

the records and pass appropriate orders in any consumer dispute which is pending before and has been decided by any District Forum where it appears to the state Commission that the District Forum wrongly exercised its jurisdiction. State Commission also has powers to transfer any pending case from one Forum to the other Forum in its jurisdiction.

The administrative jurisdiction of the state commission is limited to

1. Calling for periodical returns regarding the institution, disposal, pendency of cases;
2. Issuance of instructions regarding adoption of uniform procedure in the hearing of matter, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents.
3. Generally overseeing the functioning of the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

Section 16(1B) provides authority to State Commission to constitute additional bench

The State Commission is empowered to transfer any complaint pending before the District Forum to another District Forum within the state in the interest of justice, on the application of the complainant or on its own motion.

National Commission:

In Section 21 of the Act territorial jurisdiction of the National Commission is not specified. However, the National Commission, in practice has jurisdiction to the whole of India except the State of Jammu & Kashmir. The pecuniary limits of its jurisdiction is above rupees one crore. It has appellate jurisdiction on the orders passed by

any state commission. Section 23 provides an opportunity to any person aggrieved by an order made by the National Commission to prefer an appeal to the Supreme Court. Further the National Commission shall have administrative control over all the State Commissions and District Fora in the following matters;

1. Calling for periodical reports regarding filing, disposal and pendency of cases
2. Issuance of instructions to adopt uniform procedures
3. To oversee the functions of state Commissions and District Fora and to ensure that the objects and purposes of the Act are best served.

The procedure applicable to District Forum under provisions of sections 12, 13 and 14 are also applicable to the state commission and the rules made there under for the disposal of complaints by the District Forum are applicable to state commission with such modifications as may be necessary. Same procedure is applicable to the National Commission. But National Commission shall have power to review any order made by it where there is an error apparent on the face of record and such power is not vested in either state commission or District Forum. The National Commission has power to set aside the exparte order, which the state commission, or District Forum does not have.

By Act 62 of 2002 a provision was inserted for establishment of circuit benches at state commission and National Commission in order to bring justice close to the aggrieved consumers and also for quick dispensation of justice. State Commissions and National Commission are established in state capitals and National capital respectively and function there only. Keeping in view the large area to be covered under their jurisdiction the parliament in its wisdom inserted Section 17B for establishment of Circuit Benches.

The State Commissions and National Commission have appellate jurisdiction and any person aggrieved of the order of the District Forum may prefer an appeal to the State Commission against such order and against the order of the State Commission to the National Commission. Any person aggrieved by an order of the National Commission may appeal to the Supreme Court. The time allowed for filing such appeals is only 30 days. At the discretion of the appellate authority the delay may be condoned. But no appeal by a person who is required to pay any amount in terms of the lower Forum order shall be entertained by the State Commission, National Commission or Supreme Court unless he deposits fifty per cent of that amount or Rs.25,000/- Rs.35,000/- or Rs.50,000/- whichever is less for appeal to the State Commission, National Commission or Supreme Court respectively.

Procedure for hearing of appeal is laid down under section 19A inserted by Act 62 of 2002. The appeal shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of admission. Without sufficient cause no adjournment shall be granted by the State Commission or National Commission. Reasons for grant of adjournment shall be recorded in writing and also order as to costs occasioned by the adjournment. If there is any delay in disposal of appeal reasons for the same shall be recorded in writing at the time of disposing of the said appeal.

Transfer of cases:

Both State Commissions and National Commission are empowered to transfer any complaint to another Forum or commission in the interest of justice. The transfer can be made either by an application of the complainant or of its own motion. State commission can transfer any complaint pending before the District Forum to another District Forum. The National Commission can transfer any

complaint pending before the District Forum of one state to a District Forum of another state or before one state commission to another state commission.

It is the prime most duty of the National Commission and State Commissions not to interfere with the Quasi-judicial freedom of the Fora.

For the purpose of giving effect to the provisions of Consumer Protection Act, the National Commission is empowered to make regulations not inconsistent with the Act with the previous approval of the Central Government, by notification. Every regulation thus made under this Act shall be laid, as soon as it is made, before each house of Parliament, while it is in session. (National Commission made regulations recently in 2005 which are provided in Annexure)

Appeals:

There are provisions for making appeal against the order of the District Forum to the State Commission, against the order of the State Commission to the National Commission and against the order of the National Commission to the Supreme Court by any aggrieved party. Appeals before any appellate authority under this Act should be made within 30 days. Appeals filed after 30 days may be allowed at the discretion of the appellate court by condoning the delay on a sufficient cause. But these courts are under legal obligation to record reasons for condoning such delay in writing. Appeals are allowed subject to the following conditions;

- a) Any person aggrieved by the order of the District Forum can make an appeal to the State Commission. But the person, who is required to pay any amount in terms of the District Forum order must deposit 50% of the decreed amount or Rs.25,000/- whichever is less, in the State Commission.

- b) The order of the State Commission is appealable to the National Commission. The person who is required to pay amount in terms of the State Commission order can make an appeal only on deposit of 50% of the decreed amount of Rs.35,000/- whichever is less, in the National Commission.
- c) Any person who is aggrieved by the order of the National Commission and who wish to challenge the order of the National Commission may prefer an appeal to the Supreme Court. But the person who is required to pay any amount in terms of the order of the National Commission must deposit 50% of such amount or Rs.50,000/- whichever is less, in the Supreme Court.

USEFUL REFERENCES:

In **Smt Meena Kanchan Vs. Shibbu & Ors II (2003) CPJ 147 U.P.State Commission** held that as no certified copy was filed with the memo of appeal the appeal was incompetent and was liable to be dismissed on that ground alone.

Haryana State Electricity Board Vs. Bhalle Ram II (1994) CPJ 207 (NC)

The appellate Forum constituted under the Consumer Protection Act should not insist on the presence of the appellant or an authorised representative of his at the time when the appeal is taken up for hearing.

In **Arvind Kumar Gupta Vs. Chandra Prakash Dixit, U.P.State Commission II (2003) CPJ 178** held that points not raised before Forum, can not be considered at appellate stage.

In **Darshanlal Jain Vs. Vice-Chairman, DDA III (2002) CPJ 291 the Delhi State Commission** held as follows:

“We have heard the appellant at length on the question of admission of the present appeal and have also carefully gone through the documents/material on record. During the course of arguments, it is contended by the appellant that he is a senior citizen and a heart patient and, therefore, a direction be issued to the District Forum to dispose of the complaint filed by him, under Sec 12 of the C.P.Act, 1986 and fixed for 7.3.02, on priority i.e., at an early date. In so far as the above grievance of the appellant is concerned, the position is that as per the statutory provisions contained in the Act an appeal under Sec 15 of the Act can only be filed against an order passed by the District Forum under Sec 14 of the Act and, as such the present appeal, filed by the appellant, with the above grievance is not maintainable. The present petition, filed by the appellant, can not also be treated as a petition under Sec 17(b) of the Act, because of the limited scope of Section 17(b) of the Act. In view of the position explained above, the present appeal, filed by the appellant is disposed of with the observations that the appellant if so advised may move an appropriate application before the concerned District Forum for early disposal of this complaint stated to be pending before the District Forum. Since the appellant is a senior citizen, we hope that such an application, if filed shall be considered with due sympathy by the concerned District Forum.”

CONSUMER PROTECTION RULES, 1987:**Procedure to be followed by the National Commission (Rule 14):**

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the National Commission or be sent by registered post addressed to the National Commission;

- (a) the name, description and the address of the complainant;
 - (b) the name, description and address of the opposite party or parties as the case may be, so far as they can be ascertained;
 - (c) the facts relating to complaint and when and where it arose;
 - (d) documents in support of the allegations contained in the complaint;
 - (e) the relief which complainant claims
- (2) The National Commission shall, in disposal of any complaint before it as far as possible, follow the procedure laid down in sub-sections (1) and (2) of Section 13 in relation to complaint received by the District Forum.
- (3) On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents to appear before the National Commission. Where the complaint or his agent fail to appear before the National Commission on such days, the National Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing, the National Commission may decide the complaint ex-parte.
- (4) The National Commission may, on such terms, as it deems fit and at any stage of the proceedings, adjourn the hearing of complaint but the complaint shall be decided, as far as possible, within a period of three months from the date of notice received by opposite party where complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.
- (5) If after the proceedings conducted under sub-rule (3), the National Commission is satisfied with the allegations contained in the complaint, it shall issue orders to the

opposite party or parties, as the case may be, directing him or them to take one or more of the things as mentioned in sub-section (1) of section 14. The National Commission shall also have the power to direct that any order passed by it, where no appeal has been preferred under Section 23 or where the order of the National Commission has been affirmed by the Supreme Court under that section, be published in the official Gazette or through any other media and no legal proceedings shall lie against the National Commission or any media, for such publication.

Procedure for hearing Appeal by the National Commission (Rule 15 of Central Consumer Protection Rules):

1. Memorandum shall be presented by the appellant or his agent to the National Commission in person or be sent by registered post addressed to the Commission.
2. Every memorandum filed under sub-rule (1) shall be in legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively.
3. Each memorandum shall be accompanied by a certified copy of the order of the State Commission appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum.
4. When the appeal is presented after the expiry of the period of limitation as specified in the Act, the memorandum shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the National Commission that he has sufficient cause

for not preferring the appeal within the period of limitation.

5. The appellant shall submit six copies of the memorandum to the Commission for official purpose.
6. On the date of hearing or on any other day to which hearing may be adjourned, it shall be obligatory for the parties or their agents to appear before the National Commission. If appellant or his agent fails to appear on such date, the National Commission may in its discretion either dismiss the appeal or decide ex-parte on merits. If the respondent or his agent fails to appear on such date, the National Commission shall proceed ex-parte and shall decide the appeal on merits of the case.
7. The appellant shall not except by leave of the National Commission, urge or be heard in support of any ground of objection not set forth in the memorandum but the National Commission, in deciding the appeal, may not confine to the grounds of objection set forth in the memorandum:
Provided that the Commission shall not rest its decision on any other ground other than those specified in the memorandum unless the party who may be affected thereby, has been given an opportunity of being heard by the National Commission.
8. The National Commission on such term, as it may think fit and at any stage, adjourn the hearing of the appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided, as far as possible, within 90 days from the date of hearing.
9. The order of the National Commission shall be communicated to the parties concerned free of cost.

Sitting of the National Commission and signing of orders (Rule 15A):

(1) Every proceeding of the National Commission shall be conducted by the President or the senior most member authorised under Rule 12 and at least two members thereof sitting together:

Provided that where the member or members for any reason are unable to conduct the proceeding till it is completed, the President or the senior most member authorised under Rule 12 shall conduct such proceeding de novo

(2) Every order made by the National Commission shall be signed by the President or the senior most member authorised under Rule 12 and at least two members who conducted the proceeding and if there is any difference of opinion among themselves, the opinion of majority shall be the order of the National Commission

Provided that where the proceeding is conducted by the President or the senior most member authorised under Rule 12 and three members thereof and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and such point or points shall be decided according to the opinion of the majority of the National Commission.

Additional Powers of Redressal Agencies:

Rule 10 of the Consumer Protection Rules 1987 gives additional powers as under:

The National Commission, the State Commission and the District Forum shall have power to require any person

- (a) to produce before, and allow to be examined and kept by an officer of the National Commission, the State Commission or the District Forum, as the case may be, specified in this behalf, such books, accounts,

- documents or commodities in the custody or under the control of the person so required as may be specified or described in the requisition, if the examination of such books, accounts, documents or commodities are required for the purpose of this Act;
- (b) to furnish to an officer so specified, such information as may be required for the purpose of this Act.

(2)(a) Where during any proceeding under this Act, the National Commission, the State Commission or the District Forum, as the case may be, have any ground to believe that any book, paper, commodity or document which may be required to be produced in such proceedings are being, or may be destroyed, mutilated, altered, falsified, or secreted, it may, by written order, authorise any officer to exercise the power to entry and search of any premises. Such authorised officer may also seize such books, papers, documents or commodities as are required for the purpose of this Act.

Provided that seizure shall be communicated to the National Commission, the State Commission or the District Forum, as the case may be, as soon as it is made or within a period not exceeding 72 hours of making such seizure after specifying the reasons in writing for making such seizure

(b) The National Commission, the State Commission or the District Forum, as the case may be, on examination of such seized documents or commodities, as the case may be, may order the retention thereof or may return it to the party concerned.

Finality of orders:

Every order of the District Forum, the State Commission or the National Commission shall be final if no appeal has been preferred against such order.

No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

USEFUL REFERENCES:

If urgency is involved in a case, it can always be heard early. Dismissing the application for early hearing of complaint smacks of arbitrariness and non-application of mind. It is even against the object and purpose of the C.P.Act (2004 CTJ 89 (CP) Chandigarh)

The decisions of the Consumer Disputes Redressal Forums including the State Commissions and the National Commissions are not binding precedents on the courts. The Consumer Forums only pass orders redressing consumer disputes for granting reliefs to the consumers. They are not courts like the High Court or Supreme Court. Therefore their decisions are not judgments laying down a ratio decidendi (2004 CTJ 101 Madras H.C.)

In **N.K.Modi Vs. Fair Air Engineers Pvt Ltd & Anr I (1993) CPJ 5 (NC) = 1993(1) CPR 486**, the National Commission held as under:

“Even it is to be assumed that the proceeding for adjudication of the complaint before the Consumer Forum is a ‘legal proceeding’, we are clearly of opinion that a Consumer Forum is not a judicial authority as contemplated by the section. In order to be a judicial authority, it is necessary that at least some part of the ‘judicial power’ of the state should be transferred to and vested in said authority. Under the constitution of India the judicial power of the state has been invested in the regular hierarchy of civil and criminal courts of the land and also in certain special courts specifically established for the purpose under special enactments. In our view it is not possible to hold that any part of the judicial power of

the state has been transferred in favour of the Forums constituted under the Act. Though these Forums are vested with the function of adjudicating disputes concerning certain categories of the grievances of consumers, they are two functions in an informal manner conforming only to the principles of natural justice. We are unable to agree with the view expressed by the State Commission that the Forums have the 'trappings of a court'. As we see it, the endeavour of Parliament has been to ensure that these Forums function in a totally informal manner free from the shackles and trappings of Courts. The proceedings of the Forum are not governed by the Evidence Act or the Civil Procedure Code (except certain provisions enumerated in Section 13(4) of the Act which relate only to the summoning and enforcing of attendance of any witness, taking evidence on oath, the reception of evidence on affidavits, requisitioning of the report of analysis from any appropriate laboratory and the issuing of any commission for the examination of any witness). The provisions of Limitation Act are also not, in terms, applicable to proceedings before the Consumer Forums and it is only by virtue of the decisions of this Commission that stale claims which have become unenforceable in courts under the general laws are not entertained by Consumer Forums".

But the Supreme Court in the above case, on an appeal **III (1996) CPJ 1 (SC)** held that the District Forums, State Commissions and National Commission have all the trappings of a civil court and judicial authority. The proceedings before them are legal proceedings. Further the court held that in the context in which the word "court" is used in Section 9A of the Special Courts Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims". Thus we have no hesitation to hold that the proceedings before the District Forums, State Commissions and the National Commission are legal proceedings.

SPEEDY DISPOSAL:

In **V.R.Menon Vs. Pramukh Swami Eye Hospital III (2002) CPJ 33 Maharastra State Commission** held as under:

“The purpose of elaborating the above point is to make known and understood to the Forums as also to all concerned, in particular government as to how their i.e., of the Fora’s independence has been protected, recognized and accepted which they are expected to exercise while discharging their duties and functions in resolution of consumer disputes impartially and independently, as also without succumbing to the pressure of any agency in discharge of their functions. We expect and hope that presiding officers of the Forums shall realize their responsibilities shall endeavour and exert to serve the consumers with full dedication, sense of duties and without social commitments and work and function in a team spirit instilling confidence in the minds of the public. The concerned agencies shall also recognize the independent status of the Forum, being in par with courts and shall respect and maintain their prestige and dignity”.

Further it held as follows; “ we wish to remind all District Forums in the State that they will bear out whatever stated herein above and shall ensure speedy disposal of the consumer disputes and shall further ensure that the consumers are not put to hardship and sufferings as the case in the matter in hand. We also further reiterate that the Forums shall not get swayed by technical rigidities and to be hyper-technical in the conduct of trial of consumer disputes and that they should strive to see that the consumer litigants get speedy reliefs bearing in mind the benevolent and laudable object of Consumer Protection Act, 1986. We are aware and fully conscious of the facts that allowances etc paid to the Presiding Officers of Fora are not satisfactory especially of the part-timer Members.

But having accepted the responsibility, they shall discharge their social obligations and commitments, with sense of duty and service to the cause of consumers bearing in mind as to what the Supreme Court has laid down. Most importantly they be prompt and punctual in ensuring their attendance in the Forums and participate in the process of disposal of consumer disputes, so that Forums remain effectively functional, during the full working hours of the day.”

INTERLOCUTORY ORDER:

In *Ansal Housing and Construction Ltd., Vs. Neeraj Saxena II* (2000) CPJ 170 the Uttar Pradesh State Commission held that no revision lies against interlocutory order.

In *Jyotsna Aravind Kumar Sudh & Ors Vs. Bombay Hospital Trust, III* (1999) CPJ 1 (SC) the **Supreme Court** has ruled that no jurisdiction is vested with the State Commission under the Act to set aside the ex-parte order.

In *Mutual fund Vs. Ganti Narasimha Murthy I* (2000) CPJ 206 the **A.P.State Commission** held that it is a well settled principle that the tribunals under Consumer Protection Act, 1986 have no power to set aside the orders made ex-parte or dismissed for default.

The Supreme Court held as follows in **Laxmi Engineering Works Vs. P.S.G.Industrial Institute (SC) 1995 (2) CPR 11**

“ A review of the provisions of the Act discloses that the quasi judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Forums/Commissions were not supposed to supplant but

supplement the existing judicial system. The idea was to provide an additional Forum providing inexpensive and speedy resolution of disputes. Indeed the entire Act revolves round the consumer and is designed to protect his interest.”

In **S.K.Abdul Sukur Vs. State of Orissa & Ors II (1991) CPJ 202 the National Commission** held that merely because a complaint involves examination and cross-examination of witnesses is not, by itself, sufficient for a redressal agency to refuse to exercise its jurisdiction, that the Act, in fact, empowers it to summon and examine witnesses on oath and receive documentary evidence and that such refusal amounts to erroneous abdication of its jurisdiction

In **Majestic Auto Ltd., Vs. S.H.K.Kant II (1991) CPJ 466** the Delhi State Commission held that the District Forum was not right in holding that as there was no provision in the Act for setting aside the ex-parte order, the application for setting aside the ex-parte order was not maintainable.

But Tamilnadu State Commission has expressed a different view in **P.J.Lamech Vs. Chairman, T.N.Housing Board, Madras 1991 (1) CPR 53**. The complaint has been dismissed for default, which is a final order, and this Forum is no longer seized of the matter, which is finally disposed of. The State Commission has therefore, no power to set aside the dismissal of the complaint for default.

In case, if a tribunal such as District Forum made an ex-parte award, the provision of Order IX Rule 13 of CPC are attracted. Hence, it is competent to entertain an application to set aside an ex-parte award.

The court is not bound to wait for the appearance of a party until it closes for the day. (**AIR 1942 Orissa 75**)

In **Homeopathic Medical College and Hospital, Chandigarh Vs Miss Gunita Virk I (1996) CPJ 37 (NC)**

the National Commission held that Fora constituted under the Consumer Protection Act have no jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal. It is for the civil court to determine this point.

COMPLAINT HANDLING

Who may file a complaint?

Section 12 deals with the manner in which the complaint shall be made, according to the title of the section. But in fact this section discusses on who shall file a complaint before a redressal Forum instead of the manner in which the complaint shall be made. A complaint in writing on unfair/restrictive trade practice, defective goods/ hazardous goods, deficiency of service, excess price, hazardous services may be filed by a consumer, recognized consumer association, one or more consumers (class action) or the Central Government or State Government by paying required fee. When once the complaint is filed in the Consumer Forum the ball sets rolling in the Consumer Forum from day one.

On receipt of complaint the District Forum may either allow the complaint or reject it. But a complaint shall not be rejected unless an opportunity is given to the complainant of being heard. The admissibility of the complaint shall be decided within twenty-one days from the date on which the complaint was received. If a complaint is admitted, it shall not be transferred to any other court or tribunal or any authority set-up by or under any other law for the time being in force. But State Commission, on the application of the complainant or of its own motion, transfer any complaint pending before the

District Forum to another District Forum within the State in the interest of justice. National Commission can transfer any complaint pending before the District Forum of one state to a District Forum of another state or before one State Commission to another State Commission. But such transfers may cast shadow on competence of members. Maharashtra State Commission in *Sunil Gopinath Raut vs Sriram P. Pingale II* (2004) CPJ 513 held as follows:

“Mere presumption or possible apprehension should not be a basis for transferring a case from one Forum to the other. It casts indirectly doubt on integrity or competence of presiding officers of Forum. Justice should not only be done but manifestly and undoubtedly seen to be done. It is essential to Presiding Officers of Forums, to ensure to instill confidence in minds of people and command respect.”

As already discussed the object of the Consumer Protection Act is to provide simple and speedy justice. For speedy dispensation of justice the Act stipulates time bound actions on the Redressal Forums. The first and foremost obligation of the Forum is to decide the admissibility of complaint within twenty-one days from the date on which the complaint was received. Prior to this stipulation of time there were instances in which some complaints were admitted after a lapse of more than one year. The very object of providing speedy justice will be vitiated by such instances. In order to correct this situation the Act was amended in 2002 and made it mandatory on the Redressal Forums to decide the admissibility of complaint within twenty-one days. On admission of complaint only section 13 comes into operation. The District Forum organizes the complaint handling in two phases. First, in Pre-admission stage of complaint and secondly in Post-admission stage.

Pre-admission Stage of complaint

It must be understood that every paper or petition filed before the Consumer Forum may not fall under the definition of complaint as defined in the Act. Section 2(1)(c) defines complaint as any allegation in writing made by a complainant that,

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider.
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects.
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.
- (iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price.
 - a. fixed by or under any law for the time being in force;
 - b. displayed on the goods or any package containing such goods;
 - c. displayed on the price list exhibited by him by or under any law for the time being in force;
 - d. agreed between the parties.

In view of the above-referred definition only those disputes relating to the four categories mentioned constitute a complaint. But while enforcing the Consumer Protection Act, 1986 the Central Government publicized that the Consumer Forums will take any complaint by a consumer, even on a post card, into cognizance. As a result complaints started pouring in with all kinds of disputes even on issues other than those mentioned in the definition. Hence, a duty is cast on the Consumer Forums, on receipt of a complaint, to verify whether such complaint falls under the definition or not. Further, the

Forum is expected to go through the complaint thoroughly and raise preliminary objections, if any.

The following points need to be verified at the stage of admission:

1. The complaint must be signed by the party.
2. If the complaint is filed by an advocate, Vakalat shall be filed along with requisite stamps.
3. The Vakalat shall be attested.
4. Corrections, if any shall be attested by the party/ advocate.
5. The postal addresses of the parties must be mentioned clearly.
6. All the documents concerned to the complaint shall be filed along with complaint.
7. The documents filed must be legible.
8. There must not be any ambiguity in the complaint or in the reliefs claimed.
9. In case of complaint by a consumer organization special power of attorney executed on a non-judicial paper or even on plain paper duly attested by a Gazatted Officer or a Notary public. (as per the NCDRC Regulations).
10. Copies in three sets in addition to the copies of the opposite parties shall be filed (NCDRC Regulations).

The Andhra Pradesh State Commission has set out Proforma Check-slip for scrutinizing consumer complaints in the state, which is provided as under:

1. Whether the contents of the complaint *prima facie* disclose any Consumer Dispute?
2. Whether this APSCDRC/District Consumer Forum has Pecuniary/Territorial Jurisdiction?
3. Whether the complaint is filed within the period of limitation?

4. Whether all the names, descriptive particulars of the parties and their postal addresses are furnished in the complaint?
5. Whether documents referred are annexed to the complaint?
6. Whether the reliefs claimed in the complaint are correct and within the purview of C.P. Act?
7. Whether sufficient number of copies of complaint is filed (4+R)?
8. Whether verified affidavit of the complainant/s is filed?

The following are the points to be observed before the complaint is admitted:

1. Jurisdiction-Territorial and pecuniary
2. Limitation
3. Admissibility
4. Whether the complainant purchased goods or availed services for commercial purpose?
5. Whether parties shown as opposite parties are necessary parties?
6. Whether the required fee has been paid?

Unless the cause of action to file a complaint is identified it will be difficult to decide on the above points. In view of this it is necessary to know what is cause of action.

Cause of Action

Normally, the aggrieved consumer would approach the Consumer Forum only when he has a cause of action to raise such dispute. But, cause of action is not defined in any legislation. The court has to necessarily adjudicate the matter basing on the cause of action only. As cause of action is a bundle of facts, the fact that has given raise to action against other party is called the cause of action. It can be better explained

by an illustration. If a person is travelling in a train and his valuables are stolen in the compartment, such person has a cause of action against Railways for its negligence. On receipt of complaint about the theft if police department does not take action he has a cause of action against police. If the valuables are insured and the insurance company wrongly repudiates the claim, again he has a different cause of action. Thus there will be different causes on the same incident and the cause of action is identified on the basis of relief claimed, on whom it is claimed, privity, the cause and effect etc. Unless there is a cause to sue the other party, Forum cannot exercise its jurisdiction on such complaint. Non-joinder of a party or mis-joinder of a party is decided only on the basis of cause of action. Basing on the date of occurrence of that particular fact which gives a right to the complainant to sue the other party, the point of limitation is computed. Some causes of action arise only once whereas, some are recurring causes of action and some are continuous causes of action. Hence, it is very much necessary for the members to identify the real cause of action to decide the matter.

In the State of Madras *vs* . C.P.Agency & Anr AIR 1960 Supreme Court 1309 the Supreme Court discussed the meaning of cause of action and defined as under:

“Every fact, which it would be necessary to prove if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence, which is necessary to prove each fact, but every fact, which is necessary to be proved.

“Everything, which if not proved gives the defendant an immediate right of judgment, must be part of the cause of action”.

In Narayan Givaji *vs*. Gurumath Gouda AIR 1939

Bombay, the Bombay High Court gave the meaning of cause of action as under:

“A cause of action briefly means ‘right and the infringement of that right’ where a party has an undoubted right and that right is infringed, a cause of action at once accrues to him”

The points of jurisdiction and limitation arise from cause of action. In case of any ambiguity in cause of action or two causes of action erroneously become part of same complaint the points of jurisdiction or limitation cannot be decided by the Forum satisfactorily. The Orissa State Commission in *National Forum for Consumer Protection vs . Keonjhar* 1994 CCJ 564 held that where in respect of different services, different persons are involved, they can not be joined as opposite parties in one complaint.

Order 2 Rule 2 of CPC also mentions about the cause of action. It states that the plaintiff shall include the whole of his claim he is entitled. But can relinquish any portion of the claim to bring the suit within the jurisdiction of that court. If the plaintiff intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the relinquished portion of his claim. This procedure is based on the statutory principle that a defendant or defendants should not be twice vexed for the same cause of action.

As already discussed it is necessary to identify the cause of action to decide on the point of limitation. Several facts which are necessary constituents of a cause of action may not occur at one and the same time and in such an event complete cause of action can arise only when last of such facts occurs.

Section 24 A of Consumer Protection Act prescribes period of limitation to file complaints before the Redressal Forums. Section 24A(1) reads that the District Forum, State

Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

Jurisdiction of the District Forum

The second important issue to be taken in to consideration before admitting the complaint is the jurisdiction of the District Forum. The jurisdiction of the District Forum can be classified into two types.

1. Territorial jurisdiction
2. Pecuniary jurisdiction.

1. *Territorial Jurisdiction:* The District Forum has jurisdiction, as the name suggests, to the revenue district or to the revenue divisions allotted to it. The Office of the District Forum has to verify whether the opposite parties mentioned in the complaint resides or carries on business within the local limits of the District Forum or the cause of action, wholly or in part arises in the territorial limits of the Forum or branch of such opposite party is situated in the local limits of the District Forum. Then only it can act and decide on the complaint.

Contract by agent on behalf of foreign principal, jurisdiction lies in India II (2004) CPJ 28 (NC)

No part of cause of action arises at a place from where bank draft is obtained – mere circulation of newspaper wherein advertisement published at particular area could not furnish cause of action on Forum of that area – place where communication of acceptance conveyed will have jurisdiction to try suit on breach of contract II (2004) CPJ 36 (NC)

Railway Ticket purchased at Dhanbad but Suit case was stolen between Dhanbad and Mugalsarai – just because the head quarters of Northern Railways are located in New Delhi it would not confer territorial jurisdiction on District Forum, Delhi. II (2003) CPJ 332, Delhi State Commission.

Deficiency in service arose only at Calcutta – Flight operator having its office at Calcutta – mere issuance of ticket from Chennai by travel agent would not bring it within territorial jurisdiction of Forum – District Forum Chennai has no jurisdiction II (2004) CPJ 547 Tamilnadu State Commission.

Commissioner of Transport vs . Y.R.Grover I (1994) CPJ 199 (NC)

In this case the Petitioner is an individual desirous of instituting an action on behalf of some persons who are not known. The State Commission allowed the petition under Order I Rule 8 of CPC. The National Commission held that the State Commission has acted without jurisdiction in granting permission to the petitioner to institute the complaint in a representative capacity for the benefit of general public by invoking the provisions of Order 1 Rule 8 of CPC. The provisions of Order 1 Rule 8 have not been made applicable to the Consumer Forums under section 13(4) of the Act nor by the rules framed under the Act.

2. Pecuniary Jurisdiction: Pecuniary Jurisdiction means the monetary limit up to which the Forum can adjudicate matters. Section 11 of the Consumer Protection Act specifies that the District Forum can entertain complaints claiming relief not exceeding Rs.20 lakh. This includes the goods or services and compensation claimed. Basing on the above, the Court fee shall be paid by the complainant. Similarly the State Commissions can entertain complaints exceeding Rs.20 lakhs and not exceeding rupees one crore value. All complaints above Rupees one crore fall within the jurisdiction of the National Commission.

But Maharashtra State Commission held otherwise;
The benefits claimed either by way of interest on

compensation not to be added for the purpose of determination of the valuation of the subject matter of the complaint for the purpose of pecuniary jurisdiction. I (2005) CPJ 470

For the purpose of determination of valuation of the subject matter of the complaint, the criteria should be to determine the same on the basis of valuation as agreed between the parties II (2003) CPJ 81 (NC), II (2003) CPJ 170 (NC)

Agreed consideration of flat less than five lakh, below pecuniary limit of commission – returned for presentation to the appropriate Forum. II (2004) CPJ 781 Maharashtra State Commission.

In a common complaint with identical interest and cause of action the valuation to be done on the basis of individual claim of consumer and not on consolidated basis of all consumers. Percy Doctor *vs.* Sona Developers (IV (2004) CPJ 285 Maharashtra State Commission).

Limitation

Another important point to be observed before admitting a complaint is whether the complaint is filed within the time prescribed.

No time limitation was prescribed in the principal Act for filing complaints. Subsequently Section 24A is inserted as per the amendments made to the Act in the year 1993. Section 24A of the Consumer Protection Act prescribes the period of time for filing a complaint before the Consumer Forum, the State Commission or the National Commission as two years from the date of cause of action. In other words, the complaints filed beyond two years from the date of cause of action cannot be entertained for adjudication.

However, the District Forum may entertain a complaint if the complainant satisfies that he had sufficient cause for not filing the complaint within the prescribed period. For this

purpose, the complainant has to file a petition for condoning the delay and the Consumer Forum shall record the reasons for condoning such delay.

Before condoning the delay, the Forum shall give notice on the condonation petition to the opposite party and after hearing both the parties, a decision shall be made on the point of limitation.

Gujarat State Commission in its order reported in 1998 Judicial Reports Consumer, 298 held that preliminary issues in the point of jurisdiction, limitation etc. going to the root of matter if rests upon some undisputed question of facts as pure questions of law, which can be decided on the basis of the averments made in the complaint and reply thereto, the same should be decided at the earliest without losing further time so as to set at rest controversy at the earliest in the said regard.

In *G. Jagadeesan vs. M.V. Sundra Murthy IV* (2003) CPJ 17 (NC) the National Commission held as follows:

“Two issues are framed by the State Commission. One, on the question of maintainability and another on the question of limitation. The State Commission decided to proceed on the maintainability first and observed that if it held in favour of the complainant, then the other issue will be decided. This does not appear to be right approach. We also find that the judgment has been rather too long.”

The National Commission further observed that as a matter of fact, the question of limitation should have gone into first and then the question of maintainability otherwise on the merit of the complaint later.

Maintainability

The next point that shall be observed by the District Forum is whether the complaint filed is within the purview of

the Consumer Protection Act, i.e. whether the complainant is a consumer as defined under Section 2(1)(d) of the Consumer Protection Act?

The following are to be considered while admitting the complaint:

1. Whether the goods, services availed/hired are of commercial in nature?
2. Whether the goods are purchased for resale?
3. Whether the parties to the dispute are necessary parties?
4. Whether the complaint is bad for non-joinder of a particular party?
5. Whether the complainant is a consumer as defined in the Act?

If the Forum raises an objection on the above points, the complaint shall be returned to the complainant to comply with the objections within 15 days as per the Regulations framed by the National Commission.

If the complainant disputes on the objections taken or fails to clear the defects pointed out by the Forum, the matter must be placed before the bench for passing appropriate orders.

If a complaint is dismissed as withdrawn due to technical defect fresh complaint on same cause of action is not maintainable unless Forum permission is obtained to file fresh complaint. I (2005) CPJ 796 Punjab.

In view of section 3, the provisions of the Act need to be applied harmoniously with the other legislations that are in force. Additional remedies available under C.P. Act are in addition to those available under local Act. Additional jurisdiction thus conferred on Forums cannot be taken away by provisions of local Act (III (2005) CPJ 368 Kerala State Commission and III (2005) CPJ 252, Gujarat State Commission)

Mahanagar Telephone Nigam Ltd *vs.* Sukhbir Singh Bhai (IV(2004) CPJ 580), the Delhi State Commission held that remedy under Consumer Protection Act and Indian Telegraph Act was independent of each other – complaint not maintainable.

Complaints Relating to Matters Seized by Company Law Board

When the Company Law Board was seized of the matter a complaint alleging non-payment of money deposited on maturity Consumer Fora have no jurisdiction, according to a decision given by the National Commission. But A.P. High Court ruled that an order of CLB approving a scheme was no bar to admit or proceed with a complaint before the Consumer Forum. It further held that an order could be passed and enforced by the Forum when it was not complied with (Prudential Capital Marketing (P) Ltd case reported in 2001 CPJ 230 A.P. High Court). Subsequently the National Commission in Held that a complainant could approach the Consumer Forum even if a matter is seized of Company Law Board provided he is not a party before the Company Law Board or received a notice from CLB.

In Allianz Capital and Management Services Ltd. *vs.* B.P. Grover 2001 (1) CPJ 41 (NC) the National Commission declined to entertain when the Company Law Board was seized of the matter. But later in Lloyds Finance Ltd *vs.* Napeena Singh in R.P.No.739 of 2001 dated 30.1.2003 the National Commission held that if the complainant had not filed any application before the Company Law Board under section 45QA of the RBI Act or had not received any notice from the Company Law Board in the proceedings initiated by any other depositor or had not participated in the proceedings before the Company Law Board, he would be entitled to file a complaint before the

Consumer Forum under the C.P. Act.

Following the ruling in the above cited dispute, the National Commission held “if a complaint by such a complainant is maintainable, he can also proceed with the execution proceedings” notwithstanding the fact that the Company Law Board formulated a scheme for repayment of deposits. *Prakash Wadwa vs. Classic Global Securities Ltd*, 2004 (8) CLD 612 (NC).

Payment of tax is not a consideration

Payment of tax to the Municipalities is not a consideration for any services rendered. A complaint is not maintainable for a direction to supply a certain quantity of water or approve building plan or to change the tariff for water, etc. But, when drainage water gets into the drinking water and the water supplied by the municipal authority is not pure and the complainant and members of his family fall sick due to intake of such water, complaint is maintainable as decided by Supreme Court reported in 1986-99 Consumer 4379 (SC)

Supplying water is a statutory duty and availing water supply on payment of tax is not hiring of service, hence the complaint is not a consumer dispute II (2004) CPJ 183 Tamilnadu State Commission.

Payment of tax for sovereign function is not a consideration for service. II (2004) CPJ 675 Bihar State Commission.

In *Akhil Bharatiya Grahak Panchayat Vs. State of Gujarat* I (1994) CPJ 114 (NC) the National Commission upheld the order of the State Commission stating as under:

“In entertaining and adjudicating upon a suit or other proceeding filed before it, the court is acting in the exercise of the sovereign judicial power of the state and it is not rendering a ‘service’ in pursuance of a contract

between the litigant and the court for which consideration has been collected. The dispensation of justice is conducted by the court not as a *quid pro quo* for the court fee that has been remitted. All sums levied and collected as court fees go to the Consolidated Fund of the State and hence it cannot be said that the payment of court fee was by way of 'consideration' for the 'hiring' or availing of a service from the court".

Financial assistance for marriage of daughter refused. Complainant not a consumer in strict sense – State extending benefits to needy citizens – duty is to honour its commitment – exgratia compensation granted II (2004) CPJ 237 Tamilnadu State Commission.

If a complaint involves in complicated questions of law or fact which requires verification and examination of large number of documents and voluminous evidence, it shall not be entertained by consumer courts as held by National Commission in Special Machines case reported in 1991 (1) CPR 52. But in a subsequent matter reported in 1991 (2) CPR 144 the National Commission held that merely because witnesses were to be examined, the Consumer Forums couldn't refuse to entertain the complaints.

In *Kabul Singh vs. National Insurance Co. Ltd.*, II (2003) CPJ 28 Haryana State Consumer Disputes Redressal Commission held that two remedies can not be availed simultaneously. In this case the complainant had filed a claim petition before Motor Accident Claims Tribunal at Sirsa and thereafter filed the complaint before the District Forum. The District Forum dismissed the complaint. State Commission also dismissed the appeal filed by the appellant-complainant.

Class action

Class action is an action by one or more consumers on

behalf of various other consumers where the cause of action is common to all the consumers who have suffered loss or damage. In such a case one or two consumers after obtaining permission from the Consumer Forum may file the dispute. For 'class action', the provisions of Rule 8 of Order I of the First Schedule of the CPC apply.

Complainants traveling in A/c bus were caused inconvenience, as A/c was not functioning properly. The complainants joined as one unit and filed complaint that could be treated as class-action for which prior permission of Forum is not necessary as held in *Rajasthan State Road Transport Corp vs. Sunil Kumar III* (2005) CPJ 568 Rajasthan State Commission.

Class action is necessary to protect large number of consumers who may suffer damages at the hands of manufacturer, trader or service provider as poor consumer who do not have sufficient resources may not be able to bring individually separate proceedings against the delinquent.

In *DKMB & Co. vs. Ashok Viswanath Jadhav & Ors II* (2002) CPJ 217 the Maharashtra State Commission rejected the revision petition filed by O.P. before the District Forum. The brief facts of the case are complainants 1 to 145 have filed common complaint claiming relief that the O.Ps be ordered and directed to execute the registered sale deed and since there is failure on their part to execute the same, compensation of Rs.10,000 each may be awarded. O.P. took objection on the ground that the cumulative effect of the total claim would exceed the pecuniary jurisdiction of District Forum. The State Commission held as follows:

“ In this respect we wish to refer to the provisions of section 2(1)(b) (iv) and 12(c) and 13(b) which have been introduced by way of amendment in the Consumer

Protection Act, 1986, in the year 1993 which allows the consumers with common and similar interest to file a complaint in a representative capacity and dispute filed by recourse to the said provisions has to be procured on consideration of individual claim of each of the consumer as distinct and not cumulatively. We are rejecting this revision with expectation that the District Forum will take up the complaint for final disposal in the light of provisions referred to herein above.”

Consumer Protection Act contemplates two different types of class actions. One class action is such as can be instituted by one or more persons with the permission of the Forum with a view to give benefit of such action to specified number of other consumers who cannot be brought before the Forum at the initial stage of filing of the complaint. Another class action which has been contemplated by the Act is to see that large number of consumers who cannot be identified even after publishing notice might get the benefit of the order as required to be passed for removal of defects in the goods or removal of deficiency in service and for awarding specified amount as stated above so as to benefit the consumers through a fund to be established by the Government. The Gujarat State Commission further held that even if no relief has been prayed for, beneficial order may be passed by the Forum so as to benefit a body of consumers as can be canvassed by the complainant or can be taken care of by the Forum as per the merits of the case which ultimately might stand established. State Commission upheld the order of the District Forum directing O.P to deposit Rs. 1,50,000 in consumer welfare fund in addition to Rs.5,000 compensation to the complainant (*Hotel Nyay Mandir vs. Iswarlal Jina Bhai Desai I* (2006) CPJ 521) Hotel Nyay Mandir charged Rs.18 per soft drink where as the MRP is Rs.12 per

bottle from Iswarlal Jina Bhai Desai. The complainant also prayed the District Forum, Bharuch to direct O.P to refund the difference of amount charged from various consumers in the last three years to any consumer association doing service to consumers.

Court of law has no jurisdiction to direct matter to be governed by one statute when provisions of another statute applicable. (*Neeraj Munjal vs. Atul Grover Minor II* (2005) CPJ 1 (SC).

In *Kishin vs. Customer Care Centre*, IV (2004) CPJ 468 Tamil Nadu State Commission held that on non-delivery of letters, money orders and other postal articles a complaint was not maintainable in view of section 6 of Indian Post Office Act.

In the case of *Union of India & Ors vs. Sri Ramji Enterprises & Anr* (F.A.N.411 of 1996) the National Commission held that in view of the provisions of section 15 of the Railway Claims Tribunal Act, 1987, District Forums established under the CPA will have no jurisdiction over the matters covered under Railway Claims Tribunal Act. Section 3 of the C.P.A. is to be read in consonance with the provisions barring jurisdiction of a court or other tribunals absolutely. If a District Forum assumes jurisdiction in respect of matter falling exclusively within the jurisdiction of Tribunals established under Railway claims Tribunal Act, 1987 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or similar other enactments that would certainly be in derogation of these provisions which is not permissible.

Remedy under C.P. Act barred by section 15 of Railways Act (IV (2004) CPJ 136 Chattisgarh State Commission)

Whether the complainant purchased goods or availed services for commercial purpose?

In order to decide whether the complainant purchased the goods or availed services for a commercial purpose it is relevant to refer to explanation given under section 2(1)(d) which is as follows:

“Explanation: For this purpose of this clause, commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of his earning livelihood, by means of self-employment. Thus, the goods purchased or services availed do not come under commercial purpose if used by the consumer to earn his livelihood by self-employment. There is catena of decisions on this point.

Whether parties shown as opposite parties are necessary parties?

In order to prevent harassment to persons who are not connected to the dispute the Forum must carefully examine whether the parties mentioned in the complaint are necessary parties. Sometimes the complainant may be in doubt as to from whom he is entitled for relief. The following provisions of CPC throw light and better understanding on the subject.

ORDER I

Rule 1: Who may be joined as plaintiffs: All persons may be joined in one suit as plaintiffs where –

- (a) any right to relief in respect of, or arising out of, the same act of transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
- (b) if such persons brought separate suits, any common question of law or fact would arise.

Rule 3: Who may be joined as defendants: All persons may be joined in one suit as defendants where –

- (a) any right to relief in respect of, or arising out of, the same Act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- (b) if separate suits were brought against such persons, any common, question of law or fact would arise.

Rule 7: When plaintiff in doubt from whom redress is to be sought: Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

Rule 9: Misjoinder and non-joinder: No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

Rule 10: Suit in name of wrong plaintiff:

- (1) Where a suit has been instituted in the name of wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
- (2) Court may strike out or add parties: The Court may at any stage of the proceedings, either upon or without

the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

- (3) No person shall be added as plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
- (4) Where defendant added, plaint to be amended: Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

For taking the complaint on file requisite court fee shall be paid by the complainant as per rules.

Post-Admission stage of complaint

Once the complaint is admitted section 13 comes into operation, which reads as follows:

Procedure to be followed: Section 13 gives in detail the procedure to be followed on admission of complaint.

Section 13 prescribed procedure for conducting the proceedings on admission of a complaint. This procedure is of two kinds. In the first category if defects are alleged in the complaint and such defects cannot be determined without proper analysis, such goods shall be sent to appropriate laboratory. In the second category where there is no need to determine the defect by analysis or such defect cannot be

determined even on analysis or the complaint is in relation to deficiency in service a different procedure is prescribed. The following are the procedures mentioned under section 13.

Section 13: "Procedure on Admission of complaint: (1)
The District Forum shall, on admission of a complaint, if it relates to any goods-

- (a) refer a copy of admitted complaint, within 21 days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum;
- (b) Where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer disputes in the manner specified in clauses (c) to (g);
- (c) Where the complaint alleges a defect in the goods which can not be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District Forum within a period of 45 days of the receipt of the reference or within such extended period as may be granted by

the District Forum;

- (d) Before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out necessary analysis or test in relation to the goods in question;
- (e) The District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;
- (f) If any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of the analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;
- (g) The District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under Sec 14.

Section 13(c) provides that the District Forum shall refer the defective goods to the appropriate laboratory along with a direction to analyse or list such goods to find out the nature of

defect. Such goods must be sealed and authenticated by the District Forum in the manner prescribed. It is necessary to know what the prescribed manner is?

Prescribed manner for sending goods for laboratory analysis

The sample should be sealed and labeled. The label must contain the following information namely:

1. Name and address of the appropriate laboratory to which the sample will be sent
2. Name and address of the District Forum
3. C.C. Number
4. Description of goods
5. Seal of the District Forum
6. Date of seal

Before any sample of goods is referred to any appropriate laboratory the District Forum may require the complainant to deposit laboratory fees and remit the same to the credit of appropriate laboratory for carrying out the necessary analysis or test. On receipt of the laboratory report the District Forum shall forward a copy of the report to the opposite party. If any of the parties disputes the correctness of findings of the laboratory the Forum shall require the party to submit its objections in writing. After hearing both the parties the Forum shall issue an appropriate order.

Delhi State Commission held that where the defect can be seen by naked eyes, there is no need to send it for laboratory test. ((1993) 1 CPR 654 B)

(2) The District Forum shall if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed or if the complaint relates to any services-

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum;
- (b) Where the opposite party on receipt of a copy of the complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute-
 - (i) on the basis of the evidence brought to its notice by the complainant and the opposite party where the opposite party denies or disputes the allegations contained in the complaint; or
 - (ii) *Ex-parte* on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.
- (c) Where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

If the complaint is dismissed for default, can the Forum restore the complaint on an application by the complainant?

In *P.J.Lamech vs Chairman, Tamilnadu Housing Board, Madras 1991 (1) CPR 53 (TN)* the Tamilnadu State Commission held as follows: “The complaint has been dismissed for default which is a final order and this Forum is no longer seized of the matter which is finally disposed of. The State Commission has, therefore, no power to set aside the dismissal of the complaint for default”.

In *New India Insurance Co. vs Srinivasan I* (2000) CPJ 19 (SC) the apex body held that there was no provision in the Act to restore the complaint by Forum but a second complaint can be filed. In view of the decision rendered by the Supreme Court the complainant does have an opportunity to file a second complaint if the earlier complaint on the same cause of action was dismissed for default. However, the second complaint is subject to limitation.

In *Indrasood vs. Ambros Motors Pvt Ltd IV* (2005) CPJ 218 the Chandigarh State Commission held that the Forum acting as quasi-judicial body has jurisdiction to dismiss complaint for default and restore it on good reason being shown.

Complainant could not put appearance before Forum on the date fixed, under wrong impression. Entire evidence had been led on record. But, Forum instead of deciding complaint on merit proceeded to dismiss the complaint for default. C.P. Act moves in favour of complainant as its main aim and object suggest providing better protection to rights of consumer. Complaint restored. (III (2005) CPJ 216 Chandigarh State Commission)

Restoration

In *Mrs. Humera vs. Adhiyaksha Bharatiya Jeevan Bhima Nigam II* (2000) CPJ 598 the Madhya Pradesh State Commission held that the District Forum had no power to dismiss the complaint for non-appearance. After considering the material on record the District Forum has to make an order.

Gulam Rasool vs. Regional Manager J&K State Forest Corporation III (2003) CPJ 576 J&K State

In this case J&K State Commission expressed its view that once the case is dismissed on merits and the complainant does not produce any evidence, fresh complaint cannot be filed on the same facts. If fresh application is allowed it will open

floodgate for filing such complaints and there will be no end to the filing of complaints. This will cause more harm to the consumers than any benefit.

In *Avtar Singh Sahota vs. Pearl International Tours and Travels Pvt Ltd. & Ors* IV (2003) CPJ 673 Union Territory Consumer Disputes Redressal Commission, Chandigarh held as under:

“This complaint filed under Consumer Protection Act which has been enacted for the better protection of the consumers, the District Forum has not justified in dismissing the complaint on this technical ground. The complainant has submitted that affidavit of his son could not be filed as he was not so advised by the counsel engaged in the case, hence the District Forum should have directed the complainant to get the affidavit of his son filed if that was so vital for the disposal of the complaint”

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within 5 months if it requires analysis or testing of commodities:

Provided that no adjournment shall ordinarily be granted by the District Forum unless sufficient cause is shown and the reason for the grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make

such order as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing the reasons for the same at the time of disposing of the said complaint.

The hearing of complaint is also time bound and every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where laboratory analysis is not required. If analysis is required it needs 5 months for settlement. In order to achieve the object of speedy justice, even some restrictions are placed on the grant of adjournments. Ordinarily in any court of law, particularly in the call work, it is seen that the advocates plead mostly for adjournments. They even resort to filing of interlocutory applications for taking more adjournments. To discourage such attempts the Act was amended in 2002 and a proviso was inserted to the effect that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the Forum has recorded the reasons for grant of adjournment in writing. But due attention is not paid to this provision by many of the Fora as understood from the comments of litigants and advocates.

From careful analysis of the time schedule given in Consumer Protection Act it can be understood that the Forum has very limited time to adjudicate the matter and finally to decide. The Forum has to decide the complaint within 90 days from the date of receipt of notice by opposite party where no analysis is required by appropriate laboratory. The first forty-five days are consumed for receiving version from opposite party leaving 45 days for the rest of the proceedings. After receiving version at least 10 days are given for complainant's

affidavit and another 10 days for opposite party's affidavit. Thus another 20 days are consumed leaving 25 days for making a final order. For hearing both sides 10 more days are required and in the last 15 days ultimately the complaint should be decided. In other words the Forum at the most can give two adjournments after receiving opposite party's version and before it is finally posted for orders. The Forum can decide the matter within the time frame of 90 days only in this ideal situation. But it is not the case always. The parties resort to dilatory tactics and become hurdle for speedy disposal of the case. If a relevant party absents itself on the scheduled day of adjournment the dispute cannot be resolved within the stipulated time. Interlocutory applications cause further delay. If the consumer dispute is with regard to medical negligence absolutely there is no scope for time bound settlement. There is good number of reasons for not complying with the provisions of Consumer Protection Act. The old saying is that 'justice delayed is justice denied'. But the modern criticism on speedy disposal of cases is 'justice hurried is justice buried'. In view of these conflicting statements the members should not give an impression to the litigants as well as to advocates that they are hurrying up the matters and at the same time should not give scope for more adjournments.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

Interim Order

When the Consumer Protection Act was originally passed in 1986, there was no provision empowering the redressal Forums to pass an interim order. Apparently the reason for not providing for interim order may be due to the

idea that when the matter is expected to be disposed of within 3 months there is no need for such provision. But in the course of application of Consumer Protection Act it is realized that there is need to empower the redressal Forums to pass interim orders. Accordingly by Act 62 of 2002 Sub-section 3(B) was inserted to section 13.

According to the above sub-section 3(B) the point that comes up for discussion is whether the Redressal Forum can, on its own motion, grant interim order or it can pass such order only on the application of the complainant. It is desirable to consider granting interim order only on an application from the complainant. If such a prayer is made by the complainant in the original petition seeking interim relief, even then a separate application from the complainant is necessary.

Prior to the insertion of sub-section 3(B) to section 13 some State Commissions held that the interim relief should be in accordance with section 14 of Consumer Protection Act. If the Redressal Forums are expected to follow only section 14 even while passing interim relief it may not be possible to protect the interests of the consumers and also goes against the spirit of Sub-section 3(B). Sub-section 3(B) categorically suggests that the Forums may pass such interim order as is just and proper in the facts and circumstances of the case. Unless the Forums go beyond the scope of section 14 they may not really pass an appropriate order under the facts and circumstances of the case. Suppose, if a complainant seeks a direction to the opposite party not to disconnect the power supply till the matter is finally disposed of, necessarily the Forums have to pass interim order not mentioned in section 14. But the redressal Forums should carefully consider whether such interim order adversely affects the rights of opposite party. The following case may provide insight on this issue.

In *G.M.Electronic & Anr vs. Jayesh Babulal Chouhan & Anr* II (2005) CPJ 306 Gujarat State Commission held that no interim relief in terms of main relief can ever be granted unless complete *prima-facie* case has been shown and unless it has been shown that no hardship would be caused to the other party by passing such interim order. In this case, District Forum directed O.P. 2 and 3 to file their reply on or before 24.6.2004, on the other hand interim injunction was granted in same terms as the main relief has been granted in favour of the complainant before filing their replies.

An interim order may be passed under section 13(3B) and compliance of such order may be enforced by following the procedure laid down in section 25(1) & (2) *S.K.Bhargava vs. Mahadeva*, 2004 (8) CLD 162 (Rajasthan)

In *Satish Kumar Chawla vs. Jashir Singh* II (2003) CPJ 389 the Punjab State Commission discussed in detail the procedure to be followed under section 13 read with section 4(ii) of the Consumer Protection Act, 1986. In this case the Petitioner filed an application requesting the District Forum to make the following interim orders for an effective cross-examination of the complainants witnesses in attendance. But no request was made by the applicant petitioner to summon the President of the District Bar Association, Muktsar and the President of the Bar Association of Punjab and Haryana High Court. The District Forum instead of issuing a direction, as prayed, had summoned the President of District Bar Association, Muktsar and President of the Bar Association of Punjab and Haryana High Court. Thus the Punjab State Commission dismissed the order of the District Forum to that extent. The matter was sent back to the District Forum for decision in accordance with law.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely –

- (i) the summoning and enforcing of attendance of any defendant or witnesses and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and
- (vi) any other matter which may be prescribed

(5) Every proceeding before the District Forum, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the District Forum shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of Cr.P.C, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (4) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the first schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint

has been filed, the provisions of order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Section 50 of the CPC describes as under:

50. *Legal representative*: (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court, which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Order XXII of the Civil Procedure Code is furnished hereunder for ready reference to the reader:

Death, Marriage and Insolvency of parties

1. No abatement by party's death if right to sue survives: The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives: Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the

surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one or several plaintiffs or of sole plaintiff:
 - (1) Where one or two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
 - (2) Where within the time limited by law no application is made under sub- rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.
4. Procedure in case of death of one of several defendants or of sole defendant:
 - (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
 - (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

- (3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.
- (4) The Court whenever it thinks, fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.
- (5) Where-
 - (a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and
 - (b) the plaintiff applies after the expiry of the period specified thereof in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,
 - (c) the Court shall, in considering the application

under the said section 5, have due regard to the fact of such ignorance, if proved.

4 A. Procedure where there is no legal representatives

- (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representatives, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.
- (2) Before making an order this rule, the Court-
 1. may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and
 2. shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

5. Determination of question as to legal representative:

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question.

6. No abatement by reason of death after hearing:

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

7. Suit not abated by marriage of female party:

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone. (2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. When the plaintiff's insolvency bars suit:

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee

or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

9. Effect of abatement or dismissal:

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, shall apply to applications under sub-rule (2)

10. Procedure in case of assignment before final order in suit:

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

10A. Duty of pleader to communicate to Court death of a party:

Whenever a pleader appearing for a party to the suit comes to know the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract

between the pleader and the deceased party shall be deemed to subsist.

In *Ishwarchandra Gangrade & Ors vs. New India Assurance Co. Ltd.*, II (2000) CPJ 254 the Madhya Pradesh State Commission held that the costs of the claim couldn't be included in the aggregate value of the claim, which neither falls in the value of goods nor under the claim of compensation.

6

PROCESS

It is a basic requirement to serve notice to the other party or else it amounts to violation of principles of natural justice. Every person has a right to know about a petition filed against him in a court of law. The court must ask for his version before proceeding further on the petition. The legal maxim is that no body should be condemned unheard. Because of these fundamental legal principle the word 'process' has attained importance. Process means a process of sending notice to the parties.

Process is a vital function of a court of law without which the parties will be in dark with reference to the litigation in which they are involved. In regular courts there will be process servers through whom the notices are served. Process servers are instrumental in quick service of notice. But in the Consumer Forums there are no such mechanism and as such the Forums serve the notice by post. By Act 62 of 2002, section 28 A was inserted in Consumer Protection Act, 1986 which reads as follows:

Section 28A: (1) All notices required by this Act to be served shall be served in the manner herein after mentioned in sub-section (2).

(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post-acknowledgement due addressed to opposite party against whom complaint is made

or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).

(3) When an acknowledgement or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgement due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgement has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.

From the above section one can understand the manner in which the notices shall be served. The improvement from the earlier practice is that now the Forums can send the notices through courier or even by Fax or E-mail. The Forums can also utilize the services of speed post for service of notice. This section also empowers District Forums to declare that the notice had been duly served on the party, if postal employee makes an endorsement that the party refused to take delivery or the party is given notice. Such a declaration shall be made within thirty days from the date of issue of notice. Sub-section (4) of section 28A mandates that all notices to opposite party shall be served to the place where its profession or business is carried out and in case of complaint, to the place where actually he resides.

If notices sent by any of the above-referred methods are not served on opposite party, the complainant may seek for substitute service by an application. Usually the substitute service is made through paper publication. While permitting such an application the member should bear in mind that the petitioner should be allowed to publish such notice in a largely circulated newspaper in the area in which the opposite party has its business.

If attempts made by the Forum to service notice on the respondent fails, the petitioner may file an application for substitute service. Order V Rule 20 of Code of Civil Procedure prescribes the procedure, which is as follows:

Order V Rule 20: Substitute service: (1) Where the court is satisfied that there is no reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also open some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as

the Court thinks fit.

(1 A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service: Service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed: Where service is substituted by order of the court, the court shall fix such time for the appearance of the defendant as the case may require

Useful References:

The following findings of various Commissions would throw light on several issues involved in the process.

In *Laj Electronics vs. Mr. Bishnu Maya Panth III* (2001) CPJ 212 the Union Territory Consumer Disputes Redressal Commission held that the mere fact that the notice issued to the opposite party has not been received back undelivered is, by itself, under law, not sufficient to raise a presumption particularly when it is unclear as to whether the notice was sent by Registered AD post or under certificate of posting. There is positive assertion made by the appellant that he did not receive the notice from the District Forum-II regarding the complaint case. Since the appellant has denied the receipt of notice of the complaint case, the presumption, if any, which has been raised by the District Forum stood rebutted and there is now a disputed question about the service of the notice being affected on the appellant. We have already referred to the record of the complaint case. We do not find any material on record on the basis of which it could be precisely and decidedly held as to mode of sending of the notice

for service on the appellant. The presumption regarding the service of notice which could be raised in the event of the notice issued under registered A.D. post or for that under certificate of posting could not be raised in the circumstances mentioned above.

In *Rajadhani Builders vs. Subash Chandra Khare II* (2002) CPJ 449 M.P. State Commission held that the process server merely gave a note that the appellant refused to take notice. Personal service so affected in our opinion is not in accordance with the provisions contained under Order 5 Rule 17 of the Code of Civil Procedure. The process server has not followed prescribed procedure. The procedure as per Order 5 Rule 17 is to affix a copy of the summon on the outer door or some other conspicuous part of the house which the defendant ordinarily resides or carries on business explaining the same to the court. The process server has not been examined. Therefore such a service cannot be considered as a valid service.

In *Thankachan vs. R.D. Panicker III* (2002) CPJ 301 the Kerala State Commission held that sending of notice by registered post raises a presumption of notice, which is rebuttable. Since the notice returned without service, the proper procedure was to issue a fresh notice but the District Forum restored the complaint without service of notice to the O.P. Hence the order of District Forum was not sustainable in the eye of law and liable to be set aside.

In *Bharat Machines vs. Skiandarkhan Gulabkhan Pathan & Anr III* (2002) CPJ 286 the Maharashtra State Commission observed that the address on the postal envelope was incomplete. It was further noticed that the postal envelope on the reverse of it, there was further endorsement made by the postal employees but the same was not clear and legible. All this creates doubt about the service of process as such. Hence the State Commission held that in the interest of justice the party should

be given an opportunity of hearing the matter afresh.

In T.V. Subbarao & Ors vs. Reliance Polypropylene Ltd & Ors I (2001) CPJ 173 the Tamilnadu State Commission held that “in consumer actions/litigation, the National Commission had categorically laid down that notice to the opposite parties must have to be served by the Fora constituted under the Act by themselves incurring such expenditure from the contingent fund available at their disposal and not to insist the complainants to incur any expenditure on process”. The Forum below without paying heed to a direction of the National Commission on such aspect of the matter dismissed the complaint simply on the ground that steps have not been taken by the complainant and that sort of an order can not at all be allowed to stand. The order was set aside.

In M/s. Reliance Engineering Works vs. Renu Sharma II (2000) CPJ 5 the Punjab State Commission categorically stated that if the opposite party stopped appearing in the proceedings as the President was not coming, no fresh notice was required to be issued to the opposite party. The contention of the opposite party in this case was that since President was not attending the proceedings, the opposite party thought that on his coming to the Forum, fresh notice would be issued. This contention is devoid of merit.

It is not uncommon that the parties represent that they are not aware of the adjournment or say that they are waiting for a fresh notice from the Forum. In M/s.Vinay Motor Co vs. Garib Singh Narang, III (1993) CPJ 318 (NC), the National Commission has held that “ a duty is cast upon a party to find out about the progress of his case particularly when it is fixed for a certain date” and that “ in such circumstances a party cannot be permitted to sit at home and await receipt of fresh notice of hearing of his case”

Rules regarding the admission of complaint

When a complaint is filed the office of the Forum must scrutinize the complaint on several aspects to decide on its admissibility namely, on the points of limitation, jurisdiction, maintainability, etc. The Forum shall send a copy of the complaint within twenty-one days from the date of its admission to the opposite party mentioned in the complaint. And the opposite party will be directed to file its version within 30 days or up to a maximum of 45 days. Sub-section (1) (a) of Section 13 reads as under;

1. refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

But what happens if the Forum grants more than 15 days extended time. In *Topline Shoes Ltd vs Corporation Bank* 2002 (3) CPR 91 the Supreme Court observed that orders extending time to file should not be passed repeatedly unmindful of and totally ignoring provision that extension may not exceed 15 days. However as the State Commission gave more time to the respondent to file his reply beyond the provision the reply of respondent should not be rejected. In case defect in goods is alleged such goods shall be referred to appropriate laboratory and the laboratory should give its test report within a period of forty-five days. Thus lot of planning gone into the preparation of these time schedules in order to provide speedy justice to the aggrieved consumers. (Time stipulations are provided in Annexure)

Another point that comes up for discussion is whether the Forum can receive version after lapse of 45 days including the extended time of 15 days.

In *New India Assurance Co Ltd & Ors vs. Gudala Ravi*

Kumar I (2005) CPJ 213 written statement was refused by Forum as statutory time was over – filing of written statement was allowed by Orissa State Commission subject to payment of cost by Insurance Company.

In this case, the Insurance Company received the notice on 31.3.2003. By 16.5.2003 45 days were over. The District Forum rejected the written statement of O.P. The State Commission considered the case from another angle. Since there was allegation of theft of the vehicle for which claim was made against Insurance Company, the written statement was necessary. “Because of the lapses on the part of Insurance Company, the version could not be filed in the lower court and the Orissa State Commission allowed to file written version before the District Forum, subject to the Insurance Company paying a sum of Rs.1,000/- to the complainant towards costs.

In II (2002) CPJ 7 (SC) The Supreme Court held as under: “The power to extend time under clause (a) is with a rider that the extension may not exceed 15 days. We have already held that the provisions saying that extended time may not exceed 15 days is directory in nature. It does not mean that orders extending the time to file reply may be passed repeatedly unmindful of totally ignoring the provision that the extension may not exceed 15 days. This provision has always to be kept in mind while passing an order extending the time to file a reply to the petition. It is another matter, as we have found that in case time is extended exceeding 15 days, it may not be kind of an illegality which may deny or deprive the respondent to file his reply within the time granted by the Forum/ Commission.

Similarly in Sikenderlal & Co. & ors vs. Vaid Prakash Sharma II (1994) CPJ 100 (NC) the National Commission held that it was not open to the District Forum to strike off defence

merely because the opposite party has not appeared and filed his version and the principles of natural justice require that when an opposite party appears subsequently he should be allowed to participate in the proceedings subject to the limitation that he can not be allowed to re-open earlier proceedings.

The procedure of 'striking off defence' followed in the Civil courts as per the provisions of CPC is not provided for under the Consumer Protection Act or Rules.

As per the above provision minimum 30 days must be given to opposite party to file his version. In *General Manager Telecommunications, Coimbatore & Ors vs. Needle Industries (India) Ltd.*, I (1995) CPJ 71 (NC) the National Commission has held that the State Commission had acted illegally in affording to the opposite parties a period of only 9 days to appear and contest the complaint, while the statutory period mandatorily required to be allowed to the opposite parties is 30 days from the date of receipt of the notice.

Whether opposite party files its version or not within the specified time the Forum shall proceed to settle the consumer dispute in the following manner:

- (a) If the complaint is related to defect in goods, sample of goods shall be sent to appropriate laboratory with a direction to send its analysis report within 45 days or within such extended period. For this purpose, the Forum shall collect testing charges from the complainant and remit the same to the laboratory.
- (b) In case either of the parties disputes the analysis report, the Forum shall give a reasonable opportunity to both the parties to give their objections and issue an appropriate order.
- (c) If the complaint relates to deficiency in service, or to any goods where the above specified procedure of referring

to appropriate laboratory can not be followed shall proceed to settle the consumer dispute in the following manner:

- (i) On the basis of evidence brought to its notice by the parties
- (ii) On the basis of evidence brought to its notice by the complainant where the opposite party remain ex-parte.

It is pertinent to refer to the following case that provides answer on what to do if version of the opposite party is not filed

In *R.P. Kapoor vs. Tata Iron & Steel Co Ltd.*, II (1997) CPJ 121 (NC) the National Commission rejected the claim of the complainant that in the absence of any version of the opposite party the redressal Fora should have accepted the claim of the complainant.

THE CODE OF CIVIL PROCEDURE AND THE C.P. ACT

Section 13 clearly states that the District Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. The provisions that are applicable from Civil Procedure Code are enlisted in sub section (4). According to sub-section (6) of section 13 Rule 8 of Order 1 of the First schedule to the CPC shall apply to the proceeding before the District Forum. Further Order XXII of the First schedule to the Code of Civil Procedure, 1908 shall apply according to sub-section (7). Thus, it is clear from the above discussion that only a few of the provisions of Civil Procedure Code apply to the proceedings before the Consumer Disputes Redressal Agencies constituted under C.P. Act. In *Sunil Blood Bank & Transfusion Centre vs. Naresh Kumar II* (2002) CPJ 485, the National Commission held that all the provisions of the Code of Civil Procedure are not applicable to the Proceedings before the Redressal Forums constituted under Consumer Protection Act and only certain specific provisions enumerated in section 13(4) of the Act are made applicable to such proceedings. All the provisions of Civil Procedure Code do not apply but only the sound principles of CPC are applicable as decided by the National Commission. In *Branch Manager, LIC of India vs. Smt Zareena Sulaiman I*

(2005) CPJ 4 (NC) = 1995 (1) CPR 227. The National Commission in *House of Dubary vs. Punjab National Bank* 1996 (2) CPR 259 held that the technical rules of Procedure contained in the Code of Civil Procedure are not applicable to the proceedings before the Consumer Fora.

But the fact remains that the procedural laws are the backbone of judicial proceedings without which there would be no order in the trials before the court of law. These laws lay down the procedures to be followed in judicial proceedings and systematize the proceedings. But unfortunately these procedures are becoming stumbling blocks for quick dispensation of justice. On the strength of these procedural laws some parties are dragging on the litigations for years together. Even the judicial officers/ adjudicators are helpless in containing dilatory tactics, in the interest of justice and equity. Consequently quick dispensation of justice is becoming a myth.

Progressive thinkers are of the view that 'justice delayed is justice denied'. But in the last two decades a new school of thought is emerging basing on the view that 'justice hurried is justice buried'. Justice cannot be delivered instantaneously. It requires some time. How much time it should take depends on various factors. Now there is a radical change in the administration of justice and faster disposal of cases are aimed at. As Consumer Protection Act is the off spring of contemporary problems very aptly this legislation is designed to provide simple, speedy and inexpensive justice.

The trials before the redressal agencies constituted under the provisions of the Act, are summary in nature. Summary means without the customary legal formalities. In other words it suggests that dispense with needless details or formalities. Is it possible to dispense with procedural laws in the name of summary trials? Are these procedural laws transgressing into the summary proceedings of Consumer Forums? Will the summary trial and

procedural laws go together? Or the very thought of it is an ambivalence? But the Consumer Protection Act is so structured that while adhering to some of the provisions of procedural laws the trials must be conducted summarily. Without adopting summary trials it is not possible to adjudicate the consumer disputes within the time frame.

Members should be conversant with various provisions of procedural laws specifically mentioned in the Act. In this context it is necessary to know what provisions of Civil Procedure Code and Criminal Procedure Code are mentioned in the Act.

Applicability of CPC

However various courts held that the procedural laws are not applicable to the proceedings before the Consumer Forums with a view to provide speedy dispensation of justice. Some case laws are provided hereunder:

The Redressal Forums cannot extend the provisions of the Code of Civil Procedure in respect of the matters other than specified and indicated explicitly in C.P.Act. The Redressal Forums constituted, under the Act, have got the same powers as are vested in civil courts only in respects of certain matters referred in the Act. The redressal Forums constituted under the Act for redressal of the grievances of the consumers are not fettered by the technical rules of evidence contained in the Indian Evidence Act. I (2004) CPJ 417 J&K High Court

The Consumer Protection Act does not provide for application of the Evidence Act or Civil Procedure Code. A consumer dispute is to be decided on the yardstick of reasonable probability on the basis of the facts brought on record by the parties. (Geetha Jethani and Others *vs.* Air Port Authority of India and Ors 2004 CTJ 1048 (NC)

In Fiat India (P) Ltd., *vs.* Dr.Zahid Hussain Gillani I (2004) CPJ 417 (DB) the Jammu & Kashmir High Court held that in the

absence of pleadings, no evidence could be received and looked into by the State Commission in the strict application of the law of pleadings in the case.... It is well settled that where the averments made in the complaint are un rebutted, the presumption is that the averments are true and correct. As regards the applicability of the Code Civil Procedure to the proceedings under the Consumer Protection Act, section 13 of the C.P. Act shows that powers, which are available to a civil court under C.P. C. have also been made available to the District Forum in respect of matters enumerated in section 13(4)..... Therefore, the courts cannot extend the provisions of the Code of Civil Procedure in respect of the matters other than specified and indicated explicitly in section 13(4) to the proceedings under the Consumer Protection Act.

In *Narendra Cement Company vs. Nandeeep*, 1992 (1) CPJ 299 it was held that District Forum is not bound by rules of evidence; it has to follow principles of natural justice.

Rule 26 of Consumer Protection Regulations mandates to avoid use of C.P.C. provisions.

Whether an application under Order 1 Rule 10 and Sec 151 CPC is not maintainable? In *K.Tagore vs. Aula Gopala Rao & Anr*, the A.P.State Commission held that the provisions of Order 1 Rule 10 of Civil Procedure Code are not specifically made applicable to the proceedings before the District Forum. But the District Forum has inherent jurisdiction to make a person a party respondent whose presence is necessary for complete adjudication of the dispute raised.

In *Hero Honda Motors Ltd vs. Kannegolla Venkata Vani & Anr* III (1996) CPJ 502 (AP) the A.P.State Commission held that principles laid down under Order II Rule 2 CPC were applicable to the proceedings before the Redressal Forums. In this case the complainant filed second complaint seeking another relief. The cause of action for both is one and the same.

In *Branch Manager, LIC of India & Anr vs. Smt Zareena Sulaiman*, I (1995) CPJ 4 (NC) = 1995(1) CPR 227, the National Commission has held that it is a well settled principle of law that one can not agitate same cause of action before a court of law or other adjudicating Forum after it has already been adjudicated upon earlier. This is the basis for Order 2 rule 2 of the Civil Procedure Code which embodies a sound principle of law to obviate multiplicity of litigation and that even though the Consumer Forums are not governed by all the provisions of C.P.C., yet the sound principles of law and procedure embodied in that code are followed by the Forums.

But the National Commission in *House of Dubary vs. Punjab National Bank*, 1996 (2) CPR 259 held that the technical rules of procedure contained in the Code Civil Procedure are not applicable to the proceedings before the Consumer Fora. The bar of Order II Rule 2 of C.P.C is not attracted to the proceedings before this Commission

In *New India Assurance Co. Ltd. vs. R.Srinivasan* I (2000) CPJ 19 (SC) the Supreme Court held that interest of justice cannot be defeated by rule of technicality. The rules of procedure are intended to serve the ends of justice and not to defeat the dispensation of justice.

The Supreme Court in *New India Assurance Co. Ltd., vs. R.Srinivasan*, I (2000) CPJ 19 (SC) held that the Parliament has not thought it appropriate to apply the provisions of Order 9 of the CPC to the proceedings pending before the Consumer Disputes Redressal Agencies under the C.P.Act and, therefore, the provisions of Order 9 Rule 9, sub-rule (1) of the C.P.C. could not be attracted for, barring a second complaint filed on the same cause of action and for the same relief based on same averments made in the complaint, as were made in the first complaint which has been dismissed for default and not restored.

Chairman, U.P. Rajya Vidyut Parishad, Lucknow & Ors vs.

Gayatri Poly Pack Industries, Bhojipura & Ors I (1994) CPJ 126 (NC).

In this case the complainant respondent filed cross objections under Order XLI Rule 22 of the Code of Civil Procedure for the enhancement of the compensation amount. The National Commission held that Order XLI Rule 22 of the Civil Procedure Code had not been made applicable to the proceedings under the Consumer Protection Act, 1986. Hence, cross-objections are liable to be rejected and we order accordingly.

Another important point is whether the District Forum is empowered to set aside the *ex-parte* order. According to the Act only National Commission is empowered under section 22A to set aside the *ex-parte* order. If O.P. fails to appear before the Forum or does not file its version it will be made *ex-parte*. Before the final order is passed, if O.P. files a petition to set aside the *ex-parte* order, at its discretion the Forum can set aside the *ex-parte* order in the interest of justice. But if the O.P. approaches the District Forum with an application to set aside the *ex-parte* final order, the District Forum has no jurisdiction to set aside the final order pronounced *ex-parte*. There was no provision in the principal Act empowering the District Forum, the State Commission or the National Commission to review its own order. But by the amendments made in 2002 section 22A has been inserted to empower the National Commission to set aside the *ex-parte* order made by it. State Commissions and District Fora do not have similar powers.

The provisions of section 13 of C.P. Act show beyond doubt that the statute does not contemplate the determination of complicated issues of fact involving taking of elaborate oral evidence and adducing of voluminous documentary evidence and a detailed scrutiny and assessment of such evidence. It is no doubt true that the Forums constituted under the Act are vested with the power to examine witnesses on oath and to order discovery and production of documents. But such power is to be

exercised in cases where the issues involved are simple such as the defective quality of any goods purchased or any shortcoming or inadequacy in the quality, nature and manner of performance of a service, which the respondent has contracted to perform for consideration. Even in such cases, if it appears to the concerned Forum under the Act that the issues raised cannot be determined without taking elaborate oral and documentary evidence it is open to it decline to exercise jurisdiction and refer the party to his ordinary remedy by way of suit.

By Act No.62 of 2002 sub (section -3 B) has been inserted to section, 13 to empower the District Forum to pass such interim order as is just and proper in the facts and circumstances of the case. While exercising this power the Forum should carefully consider whether such interim order passed by it is just and proper. But as per section 13(1)(g) the Forum is expected to issue an appropriate order under section 14. Section 14 provides certain reliefs to be granted by the Forum. A reading of section 13 along with section 14 suggests that the Forum can grant only such reliefs as envisaged in section 14. Now the question that arises for clarification is whether the Forum should strictly adhere to section 14 even in case of interim orders. The very purpose of empowering Forum to pass interim order would be defeated if a restriction is placed on the Forum to give only those reliefs mentioned in section 14. The reliefs mentioned in section 14 are only relating to final order. The Forum can pass interim order as is just and appropriate in the facts and circumstances of the case.

In *Electrical Executive Engineer vs Gupteshwar Sarma*, 1993 (1) CPR 374 it was held that Redressal Forum cannot pass any order beyond reliefs mentioned under section 14. Similarly no relief can be granted by redressal Forum by means of interlocutory order which was beyond those mentioned in section 14 as decided in *Divisional Engineer vs Dr. Harihar Nath Saran*

1993 (1) CPR 295 (Bihar). But the above-referred cases are prior to the insertion of sub-section (3B) to section 13. As there is a change now in the legal position the Forum can grant just and proper interim relief not limiting to section 14.

Union Territory Consumer Disputes Redressal Commission, Chandigarh in Capt. Nagima Singh Atwal vs. National Insurance Co. Ltd & Anr held that once the complainant was entertainable and maintainable before the District Forum under the provisions of C.P. Act, the same was to be adjudicated upon as per the provisions laid down under section 13 of the C.P. Act. A perusal of Section 13 of the C.P. Act clearly provides that a copy of the complaint is to be sent to the O.P. for his written statement. Without issuing notice to the O.P. the complaint was disposed of where the District Forum went wrong.

Complaint once admitted for adjudication, same has to be proceeded with and brought to logical conclusion (I (2005) CPJ 253 Chandigarh).

Amendment of Complaint

The parties sometimes may come with a prayer to permit them to amend the complaint or counter. In such a case, the Forum must necessarily consider the need for such amendments taking into consideration the effect such amendments may cause to the other party. For instance if a complainant files a complaint against two persons, but seeks relief only against one person and later comes with a prayer not pressing the complaint against the person on whom the reliefs are sought for, what is that the Forum can do? Added to this, the complainant if makes an application to seek reliefs against the remaining person can the Forum allow such a petition. It is an established principle of law that the courts should not permit amendments, which change the basic structure of the complaint. Under such circumstances, the Forum at the most can suggest the complainant to file a fresh complaint if it is

not barred by limitation.

In some other cases the complainant may prefer to add one or more opposite parties in his complaint in which case the complaint shall be amended. When a person is added in the complaint the Consumer Forum must ensure the service of amended complaint to the newly added party as well as the other opposite parties originally mentioned in the complaint.

A person can be added or substituted as a party at any stage when the omission was due to a bonafide mistake. The power to add a party is based on judicial discretion. In order to implead a party he must have direct interest in the subject matter of the suit.

It is also necessary to amend the complaint in case of death of any party to the dispute. An obligation is set on the part of counsels representing the parties to bring it to the notice of the court the death of his client on record. Basing on such information the Consumer Forum may permit to implead the legal heirs of the deceased. Another impending reason for the complainant to come out with a prayer for amendment of complaint is for changing the reliefs sought for. In all these cases where a prayer is made to amend the complaint the Forum has to necessarily get satisfied to allow such petitions. The principles of natural justice suggest that the concerned parties should be put on notice

In *Prit Pal Singh vs. St. Jude's Convent School & Ors IV* (2003) CPJ 640 the Punjab State Commission held that there was no provision of the amendment of the complaint in the Consumer Protection Act. It was further held that the complainant is at liberty to file a fresh complaint before the District Forum on the same cause of action after giving full particulars etc in the complaint, if so advised.

Impleadment of Party

Description of O.P. not proper, suffered from mis-joinder

and non-joinder as necessary party – complainant did not take necessary steps to amend cause title and implead necessary parties – Order passed with defects and hence set aside II (2004) CPJ 698 Maharashtra State Commission.

Tamilnadu State Commission held in *Ramanuja Eximlinks vs. Norasia Lines* that there was no limitation for filing application to implead parties.

EVIDENCE

Every order of the Consumer Forum must be based on Evidence. Though there are decisions holding that the Evidence Act *in toto* not applicable before the Consumer Forums, where the trials are summary in nature, still the rules of evidence play a major role in any adjudication proceeding. There will be no order without proof and the proof of any document depends on the evidence. It necessitates the Members to understand the rules of evidence for examination of witnesses. What is primary evidence and under what circumstances the secondary evidence is admissible, who is to be examined first and the rules relating to marking of documents are some of the aspects that the members are to be quite conversant with. Otherwise it not only leads to confusion but also may lead to legal infirmity. Similarly in matters relating to things that cannot be brought before the Forum a commissioner may be appointed to note down the physical features of the object or a Commissioner may be appointed to adduce evidence from an expert who cannot come before the Forum. There are some important rules governing the appointment of Commissioner, Commissioner's duties and powers, which the members should know. Similarly the members must have the knowledge on what kind of evidence can be allowed or disallowed and under what circumstances they can grant return of documents. Learning these aspects adds strength to the members to conduct the trials wisely and develops the art of

saying no to a request made by the party to prolong the litigation.

Evidence

Evidence is a 'means' to arrive at proof. Proof is a process by which truth or falsehood as to a fact is convinced. Proof enables a reasonable man to come to a conclusion.

Presumption

In the absence of absolute certainty, we resort to presumptions. The word 'presume' means 'supposed to be'. The word 'presumption' means an inference from known facts.

There are two modes of collecting evidence by the Redressal Forums. In majority of the cases only documentary evidence is taken whereas in cases like medical negligence elaborate examination of witnesses is required. For the sake of convenience let us discuss these two modes, namely documentary evidence and oral evidence separately. Evidence is necessary to decide any dispute and more so in consumer disputes. Without evidence the Forum cannot arrive at any conclusion. Even in *ex-parte* proceedings the decision of the Forum has to necessarily rest on the evidence. The order passed by the District Forum must be supported by evidence. But in summary procedure it may not be possible to adduce elaborate evidence. In such case the Forum may advise the complainant to pursue his matter in a civil court.

Certain Provisions envisaged under the Indian Evidence Act are laid down hereunder for the sake of reference:

Sec 58: Facts admitted need not be proved: Evidence is to be given to prove the facts, which are disputed. If the O.P. admits the facts such facts are no longer in issue and hence need not be proved.

Sec 62: Primary Evidence: Primary evidence means the

document itself produced for the inspection of the court.

Sec 63, 65 and 66: Secondary evidence: Secondary evidence is also known as 'inferior or substituted evidence'. It may be given in the absence of better/primary evidence if proper explanation is given for such absence. According to section 63, copies made and compared with the originals or Photostat copies may be treated as secondary evidence.

Section 63: Secondary evidence means and includes:

1. Certified copies given under the provisions hereinafter contained;

2. Copies made from the original by mechanical process, which in themselves ensure the accuracy of the copy and copies compared with such copies;
4. Copies made from or compared with the original;
5. Counterparts of documents against the parties who did not execute them;
6. Oral accounts of the contents of a document given by some person who has himself seen it.

Section 64: Documents must be proved by primary evidence except in the cases herein after mentioned.

Section 65: Cases in which secondary evidence relating to documents may be given: The circumstances in which secondary evidence is admissible;

1. The person in possession of the original is not within the reach of the court;
2. If the original is in the possession of the opposite party;
3. If the original is lost;
4. When the original deed had already been admitted in the court;
5. If the original is a public document;
6. When the original is not easily movable and

7. When the original consists of many accounts.

Documentary evidence

Public document (section 74): 1. Documents forming the acts or records of the acts

- (i) of the sovereign authority,
- (ii) of official bodies and tribunals and
- (iii) of public officers, legislative, judicial and executive

Certified copies of public document can be received in evidence without proof whereas Certified copies of private document cannot be taken in evidence without proof of the original document.

Section 75: Private documents: All other documents other than those enlisted in section 74 of the Evidence Act are private documents. For example, Sale deed, mortgage bonds, lease, contracts, receipts, etc., are instances of private documents.

Special provisions as to evidence relating to electronic record: The contents of electronic records may be proved in accordance with the provisions of section 65 B.

Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

Affidavit

Order XIX of the Code of Civil Procedure: 'Affidavit' means a sworn statement of facts in writing made especially under

oath or an affirmation before an authorised officer or Magistrate. It states certain facts by way of declaration. It should not contain any inferences and it should be drawn up in the first person.

When a fact is proved by affidavit the opposite party gets a right either to cross-examine the deponent or to file a counter affidavit. Deponent should state such facts, which can be proved by his personal knowledge. When fact is not based on personal knowledge the deponent must state the sources of information. In interlocutory applications, the deponent can state the things of his belief. Further, every affidavit must be properly verified otherwise the court either refuses it or may give an opportunity to the party to file proper affidavit.

Form

Every affidavit shall be drawn up in the first person and divided into paragraphs numbered consecutively and each paragraph as nearly as may be, shall be confined to a distinct portion of the subject. The deponent shall sign at the foot of each page of the affidavit.

36. Description of deponent: Every person making an affidavit shall subscribe his full name, the name of his father, his age, place of residence and his trade or occupation.

Title of affidavits

Every affidavit shall be entitled as in the suit or matter in which it is filed but in every case, in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively and that there are other plaintiffs or defendants as the case may be.

38. Before whom may be sworn: Affidavits intended for use in Judicial proceedings may be sworn before any court or Magistrate or a Member of Nyaya Panchayat constituted under the

Gram Panchayats Act, or a Sub-Registrar, Nazir or Dy. Nazir or a Municipal Councilor, Legislator or a Member of a Parliament or any Gazetted Officer in the service of the State Government or the Union Government or a Notary as defined in the Notaries Act, 1952 or a retired Gazetted Officer receiving pension from Government or a Commissioned Military officer or an Advocate other than the Advocate who has been engaged in such proceeding or any Superintendent in the Office of the Commissioner of Hindu Religious Institutions and Charitable Endowments.

Marking of Documents

Exhibits admitted in evidence shall be marked as follows:

1. If filed by the complainant or one or several complainants with capital letter 'A' followed by a numeral A1, A2 A3, etc.
2. If filed by the one or several O.Ps with the capital letter 'B' followed by a numeral B1, B2, B3, etc.
3. If court exhibits, with the capital letter 'C' followed by a numeral C1, C2, C3, etc.
4. If third party exhibits, with the letter 'X' followed by a numeral X1, X2, X3, etc.
5. The exhibits filed by several complainants and O.Ps shall be marked consecutively.
6. If further exhibits are admitted in evidence, they shall be marked in accordance with the above scheme with numbers consecutive to the number on the last exhibit previously filed.
- 7) All material objects shall be marked in Arabic numbers in continuous series as M.O.1, M.O.2 and M.O.3 or the like.

Marking and certifying of exhibits

- (a) Where a party/witness wants to rely on a document, which has already been filed in the court, the same shall be referred and identified by its serial number, description and the date as given in the list of document filed in the court.
- (b) The party in his affidavit shall list out the documents referred in the affidavit with its Sl.No., description and date on the last para of the affidavit.
- (c) The court shall consider the admissibility of the documents referred in the affidavit of examination-in-chief and endorse on the documents, if admitted in evidence, the following particulars:
 - (i) the number and title of the case,
 - (ii) the name of the person who filed the document and the exhibit number given by the court,
 - (iii) the date on which it was produced,
 - (iv) the statement of its having been admitted,
 - (v) and the endorsement shall be signed or initialled by the presiding officer.

Order of Production and Examination of Witnesses (Section 135)

Section 135 of the Evidence Act provides for the order in which witnesses are to be produced and examined.

Stages in Examination of witness:

- (i) Examination in chief or chief examination
- (ii) Cross-examination and
- (iii) Re-examination

Examination-in-chief (O.XVIII R.4): In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties

rely upon the documents, the proof and admissibility of such documents, which are filed along with affidavit, shall be subject to the orders of the court.

- (ii) **Cross-Examination:** The examination of a witness by the adverse (opposite) party is called 'cross-examination'. It must relate to relevant facts. Leading question may be asked. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing. Cross-examination is considered as the most powerful weapon. According to Philip Wendell, it is a double-edged weapon, if you know how to wield; it helps to cut enemy's neck. Otherwise it cuts one's own hands.
- (iii) **Re-examination:** After cross-examination is over, the party who called the witness feels necessary may once again examine the witness. Re-examination cannot be claimed as a matter of right, except with the permission of the court. The purpose of re-examination is to explain any new matters raised in cross-examination but not to prove any other fact. It refers to matters in cross-examination, and new matter with permission of the court.

Section 159-161: Refreshing memory: When a witness is examined by putting certain questions connected to the case, he may not be able to answer/reply promptly, as he would not recollect the points. Then, the witness is given an opportunity to 'refresh his memory' by referring any writing or document. The refreshing of memory is intended to enable the witness to recollect the exact facts pertaining to the case, in the interests of justice.

Doctrine of Estoppel

The expression 'Estoppel' is derived from the French word 'estoup' which means, 'shut the mouth'. When a person tells us something, we generally hear him. If he says something different

or contradicting, we would not hear any more and contradict such statement.

Estoppel is a rule of evidence, by which a person is not allowed to plead the contrary of a fact or state of things, which he has formally asserted as existing. The object of the principle of estoppel is to prevent fraud and to manifest good faith amongst the parties. This principle is enshrined in the maxim 'Allgans contraria Non est Audiendus'. It means 'a man alleging contradictory facts ought not to be heard'.

Numbering of witnesses (Rule 95 of Civil Rules of Practice)

The witnesses examined for plaintiff or petitioner shall be numbered consecutively in the order in which they are examined and be referred to as PW1, PW2 and so on.....

Witnesses examined for defendant or opponent shall similarly be numbered as RW1, RW2 and so on... Where there are several plaintiffs or defendants, the witnesses called by each party shall, not be numbered separately but continuously, as if all had been called by single plaintiff or defendant.

Administering of Oaths

Oath of affirmation to be taken by a witness:

I do swear in the name of God that what I state shall be the truth, the whole truth and nothing but the truth.

Oath or affirmation to be taken by deponent to an affidavit.

I solemnly affirm that this is my name and signature (or mark) and that the contents of this/my affidavit are true.

Deposition

Form of Deposition:

At the top of every sheet used for recording evidence shall be written in the name of the witness, his father's name, age, residence, and occupation the number of the witness and the case numbers.

BEFORE THE DISTRICT FORUM/ STATE COMMISSION

.....

C.C.NO.....

DEPOSITION OF _____ FOR _____

Name:

Father/Husband's Name:.....

Village:

Mandal:.....

Religion: Age:.....

Occupation:.....

Solemnly affirmed and sworn by Sri.....
 President, District Forum/State Commission as per the provision
 of Act 44 of 1969 on.....

All additions, alterations, etc., in the deposition shall be
 attested by the Presiding Officer.

Where the evidence is taken down in the presence and
 under the personal direction and Superintendence of the Judge
 or from the dictation of the Judge directly on a type-writer and
 Judge shall sign or initial each page as soon as it is completed.

Opinions of experts

Section 45 of the Indian Evidence Act, 1872 makes relevant
 the opinion of experts. An expert is a skilful professional in a

particular field capable of possessing specialized knowledge concerning the matter in issue, which a common man cannot possess such persons are called experts. The opinion of expert witness plays an important role in the matter of evidence and enables the court to arrive at proper conclusions. The expert's opinion is only a piece of evidence and cannot be taken as substantive piece of evidence since it is to be judged along with other evidence. In other words, expert opinion must corroborate with other evidence. An expert evidence to be relevant and admissible, the following conditions are to be fulfilled

- (i) The subject is such that expert testimony is necessary
- (ii) The witness in question is really an expert.

Evidentiary value

An expert opinion is only the opinion evidence. It does not help the court in interpretation.

Tamil Nadu State Commission evolved a procedure, in *Dr. Sreelatha Murugan & Anr vs. Anantharaman* (II (2005) CPJ 256), to be followed by all the District Fora in Tamil Nadu. This procedure is laid down in accordance with the Supreme Court decision reported in III (2002) CPJ 8 (SC)

Whenever and wherever it is made out to the satisfaction of the Forum that the examination of a party happens to be an expert, say, a doctor, an engineer or lawyer or a professional as the case may be and the said witness or party is either unable or unwilling to appear in person to tender evidence before the Forum, then the Forum shall implement the following procedure:

1. The affidavit filed by the party or witness shall be treated as his evidence in chief examination and copies thereof shall be supplied to the other party. The party who intends to cross-examine by putting the necessary questions in writing by way of interrogatories so that those questions could be replied by such experts including by such witness

or party by way of an affidavit.

2. In case where anyone of the parties apply for the appointment of Commissioner to examine a witness or a party or an expert on commission, the Forum shall in its discretion and at the instance of either of the parties for examination and cross-examination of the party or a witness or an expert appoint a commissioner to examine the witness or a party or an expert at the working place of such party or witness or an expert or any place chosen by the Forum with the consent of both the parties.
3. In cases where the stakes are very high, the Forum, at the instance of parties and in its exercise of discretion, shall permit the examination and cross-examination of a party of an expert or a witness through video conference or by arranging telephonic conferences, however, it shall be at the cost of the person seeking such facility.
4. If a party is unable to or unwilling to submit himself to examination under anyone of the above modes, the Forum shall be at liberty to draw such inference as indicated in the law.

Appointment of a Commissioner

Parties, sometimes, may pray the Forum to appoint a Commissioner to inspect the premises or goods in dispute, which cannot be brought before the Forum for inspection. Section 13(4)(v) empowers the Consumer Forums in respect of issuing of any commission for the examination of any witness; But, in certain cases it is also necessary to appoint a commissioner to report on the present condition of a building on whether there is any approach given to the premises, etc. Though Consumer Protection Act does not have a specific provision regarding this, powers of civil court are also vested in the Forums to appoint Commissioner

to report on the present status of any particular issue. There are certain procedures laid down in Civil Procedure Code for appointment of a Commissioner. The relevant provisions of C.P.C. are extracted hereunder;

Order 26 Rule 1 : Cases in which Court may issue Commission to examine: Any Court may in any suit issue a Commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the court or who is from sickness or infirmity unable to attend it.

Provided that a commission for examination on interrogatories shall not be issued unless the court, for reasons to be recorded, thinks it necessary so to do.

Rule 2: Order for Commission: An order for the issue of a commission for the examination of a witness may be made by the court either of its own motion or on the application, supported by affidavit or otherwise of any party to the suit or of the witness to be examined.

Rule 4: Persons for whose examination commission may issue: Any person may in any suit issue a commission for the examination on interrogatories or otherwise of

- (a) any person resident beyond the local limits of its jurisdiction
- (b) any person who is about to leave such limits before the date on which he is required to be examined in court and
- (c) any person in the service of the Government who cannot in the opinion of the court, attend without detriment to the public service.

Provided that where, Under Rule 19 of Order XVI, person cannot be ordered to attend a court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interest of justice.

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the court, for reasons to be recorded, thinks it necessary so to do.

Rule 6: Court to examine witness pursuant to commission.

Every court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Rule 7: Return of Commission with depositions of witness:

Where a Commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall form part of the record of the suit (subject to the provisions of Rule 8).

Order 26 Rule 9: Commissions For Local Investigations:

In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, the court issue a commission to such person as it thinks fit directing him to make such investigation and report thereon to the court.

Provided that, where the State Government has made rules as to the person to whom such commission shall be issued, the court shall be bound by such rules.

Rule 10: Procedure of Commissioner : (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him shall return such evidence, together with his report in writing signed by him to the court.

(2) Report and depositions to be evidence: The report of

the commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the court or with the permission of the court, any of the parties to the suit may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation commissioner may be examined in person:

- (3) Commissioner may be examined in person:** Where the court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Application for Commission

Every application for issue of commission shall state grounds thereof and shall be supported by an affidavit setting forth the length of time that the execution of the commission is likely to occupy, the details regarding the locality where the commission is to be executed and its distance from the court, the estimated expenses of the commission, and the remuneration, if any, of the proposed commissioner and in the case of commission for local investigation.

- 135: Commissioner's fee:** (1) If the application for the issue of a commission is granted, the court shall, after consulting the parties or their advocates, fix the amount of commissioner's fee and expenses and direct payments thereof into court and the commission shall not be issued unless sum fixed by the court is paid into court within the prescribed period:

Provided that the court may from time to time, on the application of any party or the commissioner, direct that any further sum be brought into court by any party.

- 136. Return of Commission:** Every order for the issue of a com-

mission shall specify the date or several dates within which the return of the Commissioner and the objections of the parties thereto shall respectively be filed in court and the suit or matter shall be adjourned to a fixed day.

139. Report of Commissioner: The commissioner shall make his report in the manner prescribed and shall annex thereto a statement of the proceedings he had before him together with lists of the witnesses examined and exhibits marked by him. If he is empowered to state his opinion on the matter referred to him, he shall append to his report schedules setting out the several contested items allowed or disallowed by him and stating shortly his reasons for so doing, as in the said form.

The report of the Commissioner may be challenged by either of the parties. If there is no such challenge, the report may be accepted by the Forum. If the Commissioner does not do the job within time or fails to appear before the Forum, it is at the discretion of the Forum to cancel the appointment of such Commissioner and appoint another commissioner, with due notice to the parties.

Powers of the Commissioner

Rule 16 enacts the powers of Commissioners. Any Commissioner appointed under Order 26 has the following powers:

1. The Commissioner examines the witness or witnesses referred to him.
2. He shall call for and examine the documents and other relevant things to the subject of inquiry which is involved in the case.
3. He shall enter at any reasonable time upon or into any land or building mentioned in the order.

Duties of the Commissioner

1. The delegation of power to the Commissioner by the court cannot extend to the delegation power of the court.
2. The Commissioner must act according to the instructions given by the court.
3. He must be impartial.
4. He has to record the statement openly. It is not permissible for the Commissioner to record the statements of the witness secretly and in the absence of the parties.
5. Rule 10 provides that the Commissioner, after local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence together with his report in writing signed by him, to the court. The same procedure shall be followed in other case.
6. Rule 10 lays down that where the court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.
7. Rule 10-C mentions that the Commissioner has to follow whatever the instructions given by the Court and strictly adhere to them.
8. Rule 12 provides that the Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings, which he may hold on the inquiry, or also to report his own point referred for his examination.
9. Rule 14 provides that the Commissioner must follow the instructions issued by the Court and shall make the partitions accordingly.
10. Rule 16A provides that while the Commissioner is

examining the witness or witnesses and he puts any question to a witness, the witness or his advocate object such question, then the Commissioner shall have to write the question, the answer, the objections and the name of the party or as the case may be, the pleader so objecting. The Commissioner shall not take down answer to a question, which is objected to on the ground of privilege, but may continue with the examination of the witness, leaving the party to get the question of privilege decided by the Court. If the court decides that the question is not protected under the privileges of communication, then again the witness is directed to the Commissioner. Then the Commissioner shall record such question in record.

11. The Commissioner has to return Commission report after discharging the duty entrusted to him, to the court within the prescribed period. He must explain the causes of the delay, if caused. It is always safe that the Commissioner must report within the time given to him.

Rule 15: Rights of the Commissioner: 1. The Commissioner is paid fee for the work done, which shall be fixed by the court. The amount shall be paid by the party at whose instance or for whose benefit the Commission is issued. 2. As the Commissioner is appointed by the court, he is entitled to get the protection, if requires.

Pleadings

The Consumer Protection Act was intended to protect the legitimate interests of consumers against traders, suppliers etc. Most of the consumers are small consumers who may not be educated or conversant with law and may not know what precisely a pleading is. It is therefore, nothing wrong with the Consumer Disputes Redressal Forums interpreting the legal implications of the facts disclosed in complaints and in

submission made by the parties before them. The Consumer Disputes Redressal Forums will be failing in their duty under the Act if they did not do so. (Karnataka State Electricity Board vs Escon Private Ltd I (1991) CPJ 182)

Order 6: Pleading: 1. “Pleading” shall mean plaint or written statement. 2. Pleading to state material facts and not evidence:

- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.
- (2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in separate paragraph.
- (3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words

Rule 14: Pleading to be signed:

Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Useful References

In *Modern Automobiles Ltd vs. N.D. Bharadwaj, II* (2004) CPJ 780, Himachal Pradesh State Commission held as follows:

“A perusal of the record, it transpires that the affidavit in support of the complaint does not bear the signatures of

the complainant Shri N.D. Bharadwaj respondent herein, and yet it has been attested by the concerned Oath Commissioner. In other words, the allegations in the complaint are not supported by a paper and legal affidavit of the complainant and cannot be deemed as correct. For the same reasons, the Annexures along with the complaint, including Annexure A on which reliance has been placed in the impugned order, shall be deemed to be not supported by any affidavit sworn on oath and this cannot be accepted as a gospel truth. Additionally, the said Annexures are Xerox copies of the original documents and without any duly sworn affidavit in accordance with law, the same cannot be taken as having been proved. The impugned order being based on such non-existent pleadings in itself no order in the eye of law. It is indeed very surprising and strange that the learned Forum below failed to take all these glaring facts apparent on the face of the record into consideration before disposing of the complaint in favour of the respondent in a hurried manner.”

In *B.Suresh vs. Secretary, K.S.E.B & Ors* III (2000) CPJ 399 where after the evidence was closed a new fact was placed before the Forum through argument mode for which no affidavit was filed. The Kerala State Commission held that the argument could not be advanced on a question of fact pleaded in argument without filing affidavit and affidavit copy not being served to opposite side, the matter would not be considered.

It was held by Punjab State Commission (II (2000) CPJ 250) that if an affidavit is signed by complainant on one date and attested by oath Commissioner on a different date such affidavit cannot be treated as evidence.

Under order XIX, Rule 3, CPC, it was incumbent upon the

deponent to disclose the nature and source of his knowledge with sufficient particularity (*Sukhwinder Pal Bipin Kumar vs. State of Punjab*, AIR 1982 SC 65)

Solanki Bhartuji Fataji vs. National Insurance Co. Ltd., II (1993) CPJ 854 = 1993 (1) CPR 574 Pleadings – In absence of Oral or material evidence pleadings are no evidence.

In *Gita Mohapatra vs. General Insurance Corporation of India I* (2002) CPJ 519 the Orissa State Commission held that admissions are not conclusive proof of the facts admitted but they are liable to be explained in a given situation. Further it held that an opinion based on the opinion of another is certainly not the opinion, which can be considered to be substantive evidence before the court competent to take evidence.

Admissions must be clear and conclusive. There should be no ambiguity (AIR 1971 SC 1542). An admission if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, it shifts the onus on to the maker (AIR 1977 SC 1724).

Any admission made in ignorance of legal rights or under duress cannot bind the maker of admission (AIR 1976 SC 376).

Admissions duly proved are admissible in evidence irrespective of whether the party making them appeared in the witness box or not and whether he is confronted with the said admissions or not (AIR 1977 SC 409).

Admission is not conclusive; the maker can explain the same as erroneous (AIR 1988 SC 983).

In *Centre of Indian Consumer Protection & Research vs. The Proprietor, Design House III* (2000) CPJ 100 the Kerala State Commission held as under:

“It will be open to a complainant to lead of his choice in support of his case. If as a matter of fact in a case where the complainant’s personal attendance is necessary and the complainant did not enter the box that may be a

circumstance against the complainant's case in appreciating the other evidence tendered by the complainant. It is also open to the complainant instead of giving evidence himself to be satisfied with examination of witness on his part. The risk involved in the complainant not giving evidence of course will be there; but when the complainant is lady with other evidence so as to proceed with the matter may not be proper to dismiss the complaint on the ground that complainant is not present. What is urged before us is, that the complainant's brother was in fact present and he had also filed affidavit in lieu of chief examination. Then simply because, the complainant was not present on the day it would not be proper to dismiss the complaint for default".

In *Rabindra Kumar Deb vs. Branch Manager, Oriental Insurance Co. Ltd.*, III (2000) CPJ 8, the Meghalaya State Commission held that the Evidence Act mandates that original documents must itself be first produced for the inspection of the court. If the original is not available, secondary evidence may be given in specified circumstances. This is to prove what the document states. Upon this, although the document becomes admissible, if it is signed or handwritten then signature or handwriting must be proved. Thereafter, if the party tendering the document considers it necessary to prove the truth of its contents he must do so as he would prove a relevant fact and this is generally done by calling the author of the document.

As decided in AIR 1975 SC 1788 tape records are documents. Tape recorded conversation is admissible provided the identification of voice and accuracy of conversation if proved and is relevant to the issue (AIR 1973 SC 157).

Documents, which are not produced or proved, cannot be admitted in evidence though they have been proved in another

case between the same parties (AIR 1969 SC 255).

There is no bar for admission of documents though procured by illegal means (AIR 1973 SC 157).

Contents of telegram have no authenticity unless confirmed by a subsequent signed document.

Non-production of documents: Adverse inference can be drawn if the material in possession of party, when it is relevant is not produced (AIR 1970 SC 2025).

A word of document if ambiguous shall be construed against party who prepared it. (2004) CPJ 22 SC.

Documents produced by O.Ps in defence cannot be accepted in absence of complainant III (2005) CPJ 561 Tamilnadu State Commission.

In *Sunil Kumar Sharma vs. K.K.Hospital & Anr* I (2000) CPJ 100 the UP State Commission has held that the application to cross-examine the witnesses in the present case did not disclose any instance or fact which has not been correctly stated or has appeared to be false in view of documents already filed on record. This provision cannot be invoked as a matter of right. The court is bound to go into the facts of the case in order to find whether the prayer is justified and interest of justice will suffer in absence of such a re-examination.

The mere marking of an exhibit does not dispense with the proof of document. Merely producing a document and proving its genuineness without examining the author thereof is not sufficient to prove the truth of contents of documents. In *Vedantham Satyavathi vs. P.Venkataratnam* 1988 (1) ALT 915 it was held that if the truth of the contents itself is in issue, the proof of the document, viz., proving the genuineness and contents by producing the same would not be sufficient to prove the truth of the contents of the documents unless the writer of the documents is examined. In the absence of such evidence the contents only constitute hearsay evidence. Its probative value is very weak, in

the absence of the author who wrote it.

Documents: The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, or which they intend to rely, and which has not already been filed in court, and all documents, which the court has ordered to be produced.

In *Shakuntala Rani vs. Bharat Yadav* the Chandigarh State Commission held that photographs are inadmissible as evidence in absence of negatives and affidavit of photographer on record (III (2005) CPJ 56).

A photostat copy of a document is not admissible in evidence. Only certified copy is admissible. "In case of a photostat copy of a document before it is admitted in evidence it has to be explained as to what were circumstances under which the photostat copy was obtained and who was in possession of the original document at the time of the photograph and this should be above suspicion" – *Ashok Vs. Madhavalal* (AIR 1975 SC 1784).

Photograph can be proved by examining the photographer and by proving the negative.

Evidence of interest or partisan witnesses can be relied on without any corroboration when his evidence is found trustworthy (AIR 1976 SC 59).

Where the account of eyewitness is found credible, medical evidence pointing to alternative possibility cannot be accepted as conclusive (AIR 1988 SC).

Newspaper reports are not admissible unless the originals are produced and proved (AIR 1994 SC 1733)

Burden lies on the person alleging bias and malafides (AIR 1974 SC 555)

A counsel is not justified in making a personal attack upon the complainant or his witnesses on matters not borne out by record, or in using language, which is abusive or obscene by

making obscene or vulgar gestures in court.

Commissioner appointed by Court – Inspection of site delayed – deficiency in service alleged – Commissioner appointed by Court is answerable to court not to consumer – Complaint not maintainable II (2004) CPJ 55 Tamilnadu State Commission.

Additional evidence not allowed in absence of convincing explanation for not filing earlier II (2004) CPJ 620 A.P. State Commission.

The power of the court to put any question to a witness is to be exercised in order to discover or obtain proper proof or relevant facts.

Yudhvir Singh vs. Citi Bank, N.A. II (2003) CPJ 125

In this case the complainant made an application seeking permission of the State Commission to place on record additional evidence at a belated stage when the case was fixed for the final arguments. The Delhi State Commission held that as the genuineness of these documents was not in doubt, these documents to be allowed. The State Commission further held that the rules of procedure are intended to serve the cause of justice, therefore, for the ends of justice; these documents should be allowed to be placed on record.

Indian Institute of Engineering Studies & Anr *vs.* Tejinder Singh III (2003) CPJ 56 is a case decided by the Union Territory Consumer disputes Redressal Commission, Chandigarh. The main grievance in the Revision Petition was that the Consumer Forum had deprived the opportunity of cross-examination of the deponents of the affidavits. It was further contended that the complainants had also not been given an opportunity to controvert the evidence led by the O.P. Consequently this revision was disposed of by relegating the revisionists to the remedy indicated above for seeking leave of the District Forum to file evidence by

way of mis-joinder in the shape of affidavit which shall of-course be decided by the District Forum according to law.

In *Heeralal Ramesh Chand vs. New India Assurance Co. Ltd.*, III (2003) CPJ 43 (NC) the National Commission held that it was well-settled law that the onus of proof lies with the person who sets up the case. In the instant case, it is O.Ps who have set-up the case that the goods have been received by the buyer. They have to prove it.

In *United India Insurance Co. Ltd., vs. Pushpalaya Printers I* (2004) CPJ 22 (SC) the Supreme Court held as under:

“It is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event.... Where the words of a document are ambiguous, they shall be construed against the party who prepared the document”.

R.A.Thorat vs. Govindan Gopinathan III (2000) CPJ 104 Maharashtra State Commission held as under :

“ It should be borne in mind and remembered that the main purpose of administration of justice is created in the community of feeling of satisfaction by doing justice. There are two distinctive functions of the Forums. First to find out, scrutinize and determine the facts and material before it and then apply the law. The ultimate decision should indicate the reasons on which it is based. Recording of reasons in judicial or quasi-judicial matter is imperative and failure to do so would vitiate the final decision. A litigant is entitled to a full and reasoned judgments stating the courts appreciation of facts and reasons for coming to the conclusions.”

ADJOURNMENTS

Whenever a matter is adjourned to a later date the court directs either of the parties to take some step on the day of adjournment. The parties are expected to follow the court directions. If the party fails to do or seeks for adjournment for some reason or the other, then the court may impose costs occasioned by such adjournment. These details are noted down on the cover sheet of the petition known as order sheet. In a civil suit there might be number of steps but it is not so in consumer disputes. The consumer disputes are to be resolved within the time frame and hence the matters are to be adjudicated under summary trials. In view of this the adjournments are restricted to a minimum number as needed.

At this juncture it is relevant to refer to the provisions relating to adjournments as given in the Consumer Protection Act. Under these provisions the Forums are under obligation not to grant adjournment without sufficient reason. Further it is made mandatory to the Forum to record reasons in writing for grant of such adjournment. In the recent regulations made by the National Commission some conditions are laid down for grant of adjournments, which are as follows:

Regulation 11. Adjournment: (1) Every proceeding before a Consumer Forum shall be conducted as expeditiously as possible and as per the requirements of the Act. (2) The Consumer Forum shall record the reasons for any adjournment made by it.

(3) The cost of adjournment, if asked by the opposite party or parties, shall not be less than five hundred rupees per adjournment and could be more depending up on the value and nature of the complaint as may be decided by the Consumer Forum. (4)

The complainant, appellant or petitioner, as the case may be, may also be burdened with cost unless sufficient cause is shown for seeking adjournment Provided that in the circumstances of a particular case, the amount of cost imposed may be less than five hundred rupees but in no case other than one hundred rupees.

(5) The cost imposed may be given to the other party or parties to defray his or their expenses or be deposited in the Consumer Legal Aid Account to be maintained by the respective Consumer Forum, as the Consumer Forum may order. (6) If any adjournment is granted without awarding cost, the order sheet shall mention the reasons thereof. (7) All orders adjourning the matter shall be signed by the President and Members constituting the Bench and not by the Court Master or Bench Clerk. (8) Non-availability of a lawyer who is representing the party shall not be a ground for seeking adjournment of the matter unless absence is beyond the control of the lawyer such as his sudden illness or bereavement in the family.¶

In *Dr., J.J. Merchant & Ors vs. Shrinath Chaturvedi* reported in III (2002) CPJ 8 (SC) the Supreme Court has disapproved and strongly deprecated the tendency on the part of the Consumer Fora to go on granting adjournments on mere asking.

The Presiding officer does the job of writing notes on the order sheet and granting adjournments. In 2002 amendments the members are also empowered to preside over the proceedings in absence of President. In view of this the members should invariably learn what to write on the docket while adjourning the matter. As per Civil Procedure Code there is a sequence in which the proceeding in a matter should be followed. If the sequence is not followed some legal complications might arise. Whatever

is written on the docket will be reproduced in the court diary for the information of the parties. Unlike in civil suits, it is desirable to follow the following sequence for consumer disputes before the redressal agencies, in order to ensure speedy disposal.

1. On admission of the complaint a notice shall be ordered to the opposite party/parties referred in the complaint within 21 days. So this step is for the version of opposite parties giving time of 30 days. Accordingly, the matter should be posted to a date after 30 days. In the discretion of the Forum another 15 days can be granted for filing O.Ps version in which case the matter should be adjourned to a date after 15 days. If the O.P. files its version then the matter will be posted for complainant's affidavit. If O.P does not file its version it will be made *ex-parte*.
2. Substitute service: On receipt of complainant's affidavit the matter will be posted for hearing/arguments
3. At this stage the O.P. may come up with an interlocutory application to set aside ex-parte order passed against it. In such a case, the court at its discretion may post the matter for respondent's version.
4. On receipt of Respondent's version, and on hearing both the parties the court may allow/reject the petition on costs and post the original CC for hearing/arguments.
5. On hearing both the parties the matter will be posted for orders on a subsequent date. If members are not in the habit of discussing the issues that may arise for consideration, before writing the order, at least minimum three days are required for the perusal of the order by all members i.e., one day for each member.

The sequence as suggested above is for the bear minimum of five steps. But there may be some matters, which cannot be

resolved in just five adjournments. Particularly in medical negligence cases elaborate evidence may be taken in which case, examination, cross-examination and re-examination follow. Basing on the progress of the trial the next step is required to be taken.

In some other cases the parties may come up with different interlocutory applications to amend the complaint or to add some more parties or to implead legal representative or to summon documents or to reopen the evidence etc. In such a case procedure mentioned at Point No. 4 may be followed.

All these interlocutory applications are filed under the provisions of Civil Procedure Code. But there is no provision in the Consumer Protection Act to entertain these applications. Repeatedly the superior courts are holding that the provisions of CPC are not applicable before the Consumer Forums except the sound principles of CPC. It is necessary to follow these decisions scrupulously to dispose of the matters within the specified time mentioned in the Act. But in the interest of justice and equity at times, it is becoming necessary to entertain such applications. These applications hamper the speedy dispensation of justice. Allowing or disallowing an application is purely at the discretion of the Forum and hence the members should exercise utmost caution while exercising such discretion.

Failure of the parties to appear before the Forum on the day of adjournment results in further adjournment of the matter. More number of adjournments not only causes inconvenience to the litigant public but also shatters the confidence of public on the justice delivery system.

If parties fail to appear on the date fixed, the Forum may dismiss the complaint for default or pass order basing on the material on record.

The matters relating to grant of adjournments and costs of adjournment mentioned in Civil Procedure Code which are

usefully extracted here under for the benefit of the reader.

Order XVII (1) Court may grant time and adjourn hearing: The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.

(2) Costs of adjournment: In every such case the court shall fix a day for further hearing of the suit, and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:

Provided that

- (a) When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined unless the court finds, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.
- (b) No adjournment shall be granted at the request of a party except where the circumstances are beyond the control of that party.
- (c) The fact that the pleader of a party is engaged in another court shall not be a ground of adjournment
- (d) Where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.
- (e) Where a witness is present in court but a party or his pleader is not present or the party or his pleader, though

present in court, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

(3) Procedure if parties fail to appear on day fixed:

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

(4) Court may proceed notwithstanding either party fails to produce evidence, etc. Where any party to a suit to whom time has been granted fails to produce his evidence or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit for which time has been allowed, the court may notwithstanding such default—

- (a) if the parties are present, proceed to decide the suit forthwith or
- (b) if the parties are, or any of them is absent, proceed under Rule 2.

Though it is necessary to curtail unnecessary adjournments it is equally necessary to allow adjournment on a good cause. An appeal filed in Chandigarh State Commission fortifies the above opinion. The District Forum II U.T. Chandigarh posted the C.C. to 1.12.2004 for final arguments on which date the authorised agent of the complainant was recuperating after heart surgery and the O.P.s counsel was running high fever. On the ground of illness she prayed for adjournment but the same was declined by the District Forum. The complainant also prayed for adjournment. However, the District Forum refused the request for adjournment by both

the parties and reserved the judgment. Aggrieved by this the complainant preferred an appeal before the State Commission stating that the case has not been argued properly by either party. State Commission allowed the appeal and the case was remanded to District Forum for hearing. (*Niti vs. State of Haryana & Ors* III (2005) CPJ 594).

The request of adjournment made on behalf of the learned counsel for the appellant has been declined on the short ground that at his instance three adjournments have already been granted and the C.D. is of the last year. The order has been passed in a cryptic and non-reasoned manner. II (2004) CPJ 780.

Section 35 B of C.P.C. Costs for causing delay: (1) If, on

any date fixed for the hearing of a suit or for taking any step therein, a party to the suit:

- (a) fails to take the step which he was required by or under this code to take on that date, or
- (b) obtains an adjournment for taking such step or for producing evidence or any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent on the following prosecution of—
 - (i) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,
 - (ii) the defence by the defendant, where the defendant was ordered to pay such costs.

In *Eicher Tractor Ltd vs. Late Chittaranjan Prasad Singh* III (2003) CPJ 26 (NC) the State Commission adjourned the appeal

on 6.12.99 to 21.2.2000 but the Petitioner's counsel mistook the date as 21.4.00 and therefore none appeared for the subsequent adjournment. On 23.3.00 the appeal was dismissed in default. National Commission held that a party should not suffer for the fault of his lawyer and accordingly the dismissal order was set aside and case remanded to State Commission for deciding afresh on merits.

In *Ram Raksh Pal Gupta & Anr vs. Smt Ranjana* the National Commission held that we have to guard ourselves against the pernicious practice of strike by lawyers spreading to the Fora under the Act. Non-appearance of a lawyer in a court or Tribunal or any Authority after being engaged and having charged his fee could itself be deficiency in service on his part. There is already a public criticism that Fora under the Act are fast becoming civil courts where adjournments are granted as a matter of course. This should not be permitted otherwise the purpose of the Act will be lost. State Commissions should ensure that no adjournment is granted on the ground of strike by lawyers. If the lawyers do not appear before the District Forum or State Commission, it can decide the matter on the basis of the record, if it so chooses. A request for adjournment on the ground of strike by lawyers is not justifiable ground for adjourning the matter.

Speedy Disposal

In *Venkata Sai Finance & Chits vs. A.Rajendra Prasad II* (2000) CPJ 546 the Andhra Pradesh State Commission held as follows:

“After one or two adjournments, if counter is not filed by the opposite party, the District Forum can simultaneously proceed with receiving the affidavit evidence for the complainant and make the matter ready for immediate disposal on the date to which the matter is finally posted as a last chance for filing counter. That will disable the opposite party from contending that no further steps were

taken in the matter and, therefore, his counter should be entertained”.

Procedure where defendant only appears (Order 9 Rule 8)

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall pass a decree against the defendant upon such admission and where only part of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit (Rule 9)

- (1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceedings with the suit.
- (2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance (Rule 7)

Where the court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

ORDER SHEET

Every complaint filed in the Consumer Forum will be covered by a thick sheet called as order sheet or docket, on which the Presiding Officer records what transpired on the day of adjournment and directs either of the parties on what to do in the next adjournment. Docket is a record of events that take place in various adjournments. As a discharge summary gives the medical history of a patient during hospitalization, similarly an order sheet denotes the legal history of a complaint during its pendency in the Consumer Forum. These dockets would provide details of the proceedings as well as the present status of the proceedings. Members may go out on completion of their tenure but the proceedings before Consumer Forums continue. Docket gives the history of proceedings to the incumbents basing on which they take up the matter and continue the proceedings. In view of this the member should familiarize himself on how to write and what to write. If the matter goes for appeal, the appellate authority may also look into the order sheet details to decide on the impugned order. The following are some of the important points to remember while making a note on the docket.

1. What should be the next step? It is necessary to conduct the proceedings in an orderly manner step by step. Neither of these steps can be bye-passed or taken up in a haphazard manner. Mistakenly if the matter is posted for a wrong

step, it creates confusion and causes inconvenience to parties. Right from sending notice to O.P. till the matter is posted finally for orders there may be several steps to be followed serially. Though the proceedings before the Consumer Forums are summary in nature, whatever few steps that are necessary should be taken in a seriatim. The following are the few necessary steps; however the Forums at their discretion can go for any other step, which they deem fit. But as the matters are to be disposed, as expeditiously as possible, within the time frame, it is better to restrict the adjournments by adopting only a few necessary steps. The following are those necessary steps, in absence of interlocutory applications:

1. Notice to the Opposite party
2. Version of the Opposite party
3. Affidavit of the complainant
4. Affidavit of O.Ps
5. Hearing
6. For orders

2. What to write? It is necessary to write on the docket, which party is present and who is absent, to justify the step that the Forum may take next. In absence of such noting the parties may say that the proceedings are conducted in their absence or they may argue that they did not get opportunity to represent. It is also necessary to verify that the intended date of adjournment should not fall on a holiday. Similarly, the Forums may also consider the convenience of the parties before setting the date for adjournment. It is necessary to consider the convenience of the parties in the interest of quick disposal.

3. Recording of documents filed: Advocates may file memos at different stages of proceedings like P.S. Memo, F.S.Memo, Memo of appearance, costs received memo, notice given memo, vakalat etc. These are to be recorded on the docket.

Similarly both the parties may file various documents to establish proof and such documents are to be recorded on the docket.

4. Interlocutory application: It means an application made in course of an action; An application made for keeping things in *status quo* till the rights can be decided or for the purpose of obtaining interim direction of the court. These interlocutory applications also contain the docket sheet on which the presiding officer should write in the same manner as the dockets are written for the original petition (CC). The original CC is to be adjourned to the same date on which the IA is adjourned.

Interlocutory order is one, which is made during the pendency of original petition and before the final hearing. An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit and generally collateral to the issues formed by the pleadings and not connected with final judgement.

The term interlocutory order merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties (AIR 1977 SC 2185).

Interim Order: A temporary order, some order in the course of proceeding, not being a final order. Interim order is an order made by the Court to have effect only for a time.

Some important points to remember:

1. Scrupulously avoid corrections.
2. Replacement of docket sheet, in view of making large number of corrections, is illegal.
3. Whatever is written on the docket should be legible, brief and communicative.
4. Costs imposed and such costs whether paid should be mentioned on the order sheet.

5. What not to write: Pleadings of the parties or their representations need not be written on the docket elaborately. Dismissal for default, reasons for adjournment, dismissal for settling the matter out of the Forum, making opposite party ex-parte are some of the issues where a detailed explanation is required in making the docket order. Making lengthy notes on the docket, at times, may lead to legal complications and parties may suffer for it.

6. Semantic barriers: There are some steps, which appear to be synonymous to each other. For instance, using words, in the context of consumer dispute like enquiry, hearing and arguments one after another is superfluous. In civil matters the step 'enquiry' is given to frame the issues, whereas the term 'hearing' denotes hearing the respective parties and the word 'arguments' represents summing up of the case by the parties. Instead of using so many words for the same purpose, it is better to use the word 'hearing'; in order to remove technicalities.

In **Rajesh Kumar Sharma vs. Bright Carrier Institute & Anr II (2003) CPJ 562** the Union Territory Consumer Disputes Redressal Commission, Chandigarh allowed the appeal as the order of the District Forum is not sustainable in the eye of law. The relevant portion of the order is quoted hereunder:

“ The District Forum, in our considered opinion, did not take into consideration the earlier Zimini order dated 23.9.2002 which clearly indicates that the date of 3.10.2002 was fixed for the production of evidence of O.P.No.1 and no further hearing was to take place on 3.10.2002. As mentioned earlier, the complainant was not required to perform any act in furtherance of the hearing of the complainant on 3.10.2002 on which date, the complainant case should have been fixed for hearing arguments on a date convenient to the District Forum. Instead, the District Forum dismissed the complaint case for default . . . we

find that the District Forum committed an error in law relating to the procedure. The impugned order cannot be sustained in the eye of law. Before the District Forum could act under Rule 4 sub-rule 8 of the Rules, 1987, the District Forum should have ensured that the said date was the date of hearing of the parties. In the instant case, 3.10.2002 was not fixed vide Zimini order dated 23.9.2002 as the date of hearing of the parties. For the sake of repetition, it may be pointed out that 3.10.2002 was fixed for the evidence of O.P. No.1 only.

Similarly it is the duty of the lawyer concerned to know what order has been passed by the Court on a date, which was fixed in the case” (1974 Crl.L.J. 221).

FINDINGS OF THE DISTRICT FORUM

Complainants approach the Consumer Forums seeking some relief or the other. The very purpose of filing a complaint is to get the redressal of one's grievance by rectification of the defect or removal of deficiency or getting compensation for the loss suffered. The aggrieved consumer gets satisfied only by an appropriate relief, which the Consumer Forum grants. Section 14 of the Act deals with various reliefs the Consumer Forums can grant depending on the facts and circumstances of the case. As already discussed if the District Forum is satisfied that the goods complained of suffer from defect or there is deficiency in service it shall direct the opposite party to do things as per the provisions underlined in Section 14. The relevant provisions of Section 14 are extracted hereunder:

Section 14: Findings of the District Forum:

- (1) If, after the proceedings conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:
 - (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

- (b) to replace the goods with new goods of similar description, which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects in goods or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(i) to provide for adequate costs to parties

Section (hb) has been inserted to Section 14 by Act 62 of 2002 with effect from 15.3.2003 to enable the Consumer Forums to compensate large number of consumers. The newly inserted sub-section reads as follows;

”to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently.

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers;

Provided further the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed.”

Keeping in view of the class action claims, subsection (hb) has been inserted to award compensation to numerous consumers who suffered loss or injury. It mandates payment of minimum five per cent of the value of defective goods or deficient services as compensation. Even unidentified consumers are also eligible to get award of compensation as per this sub-section.

From the above, one can understand that Consumer Forums can grant the following reliefs:

1. To remove the defect, pointed out by the appropriate laboratory, from the goods in question. This provision suggests that the Forum can order the opposite party to remove such defects as pointed out by the appropriate

laboratory. It also suggests that the Forum is not the appropriate authority to decide the existing defects in the goods though the defects are apparent and visual. However, under Section 14(1)(e) the Forum is empowered to direct opposite party to remove defect in goods or deficiency in service even if the appropriate laboratory does not point out the defect. If O.P accepts existence of such defects then there is no need to refer the goods to appropriate laboratories. The members should acquire knowledge on where these laboratories are located and what type of goods they test.

2. To replace the goods with new goods of similar description, which shall be free from any defect. It is not adequate if the order simply says that the O.P is directed to replace the goods. Whatever is stated in Section 14(1)(b) is to be reproduced verbatim to make the order meaningful.
3. In case the defect in goods can not be removed because of non-availability of spares or the goods can not be replaced with new goods of similar description as the same model is dropped from the production, the alternate relief that can be provided is to direct the opposite party to return the price/charges paid by the complainant. In case of some goods the supplier would undertake installation also, for which he may collect installation charges. If the goods are sold and installed by the opposite party it is reasonable to direct the opposite party to return the price of goods along with installation charges.
4. The Forum may order the opposite party to do any one of the things mentioned in item Nos.1, 2 and 3 and also compensation to the consumer for any loss or injury suffered due to the negligence of the party. (How to assess the

quantum of compensation to be awarded to complaint is discussed separately in the chapter 'Award of Compensation')

5. The Forum can order the service provider to remove the defects or deficiencies in the services in question. In majority of these cases the duration of service will be completed by the time a complaint is made before the Forum. Under such circumstances this relief can not make good the services availed. Unlike goods, the production and use are done simultaneously in case of service. For services, which may continue considerably for a long time like Power Supply, Telephone, Banking, House Construction, Provident Fund etc, this relief may be granted. But for services of short tenure, the consumer having availed complete service, there will be no use in ordering removal of defect or deficiency. For instance a person traveling in train experiences deficiency in service of Railways during his journey. But as soon as he alights from the train the service contract is completed and there will be no more service left. This remedy is not for such services.
6. Under Section 14(1)(e) the same relief as contemplated in the provision created under Sec 14(1)(a) is repeated but it includes deficiencies in service. Further there is no mention in this provision regarding appropriate laboratories. This clause might have been inserted to empower the Consumer Forums to direct the opposite party to remove the defects though it is not pointed out by any appropriate laboratory. If a Redressal Agency finds a defect, which is glaring and visual in goods, in question, this clause enables the Forum to order the opposite party to remove the defect.
7. Under Section 14(1)(f) the Forum can direct the opposite party to discontinue the unfair trade practice or the restrictive trade

practice or not to repeat it. A reference to section 2(1)(c) reveals that any allegation against a trader or service provider who is adopting unfair trade practice or a restrictive trade practice constitutes a complaint. Such complaint can be filed before the Redressal Forums seeking relief against such trader or service provider. Under this clause the Forum cannot award any compensation to the complainant except directing the trader/service provider/manufacturer to discontinue unfair trade practice or the restrictive trade practice.

8. Forum can direct the opposite party not to offer hazardous goods for sale. The Forum has no suo-motu powers to give such directions and usually complainants do not approach Consumer Forum with such requests. It is only the voluntary consumer organisations or the State or Central government who may come forward with such complaint seeking such relief. Even if such a direction is given it is not certain whether the complainant keeps a track on compliance of such order. On such issues generally execution petitions are not filed.
9. Another relief the Forum can give is to direct the opposite party to withdraw the hazardous goods from being offered for sale. Here again the chances are less for filing such complaints by the public. Even in a most sensational incident of pesticidal contamination in soft drinks there was no complaint filed seeking relief against soft drink manufacturers to withdraw their production from being offered for sale. The Forums on its own motion can not direct the parties to withdraw such hazardous goods.

10. Another relief regarding hazardous goods and services, which the Redressal Forums can provide, is the cease and desist order. These are all very important provisions in protecting consumers but consumers are not coming forward to avail these provisions. Many varieties of hazardous goods and services are being produced and sold in our country. Though no detailed study has been conducted to assess the death rate in India due to hazardous goods and services there may be good number of incidents of death due to hazardous goods and services.
11. If the Forum is of the opinion that large number of consumers suffered loss or injury it can direct the opposite party to pay compensation to the consumers who are not even conveniently identifiable. Such compensation shall be not less than five per cent of the value of such defective goods sold or services provided. For example passengers traveling in a long distance express train were made to suffer during journey due to the negligence of Railway administration, the unidentifiable passengers traveling in unreserved second-class compartment are also entitled to get compensation. As they cannot be identified, the compensation that is payable to them might be credited to consumer welfare account.
12. In amendments made to Consumer Protection Act in 2002 clause (hb) was inserted to empower the Redressal Forum to use the whip on irresponsible advertisers. Consumer Forums can direct the person responsible for issuing misleading advertisement to issue corrective advertisement, to neutralise the effect of misleading advertisement.
13. Redressal Forums can also award adequate costs to parties.

In **Sky Pack Couriers Pvt Ltd Vs. Anupma Bagla 1991 (1) CPR 362** the National Commission laid down that in exercise of the inherent power, reliefs mentioned in Section 14 can only be granted. Again in **Tarsem Lal Goyal Vs. Union of India II (1993) CPJ 957** the National Commission reiterated that no relief beyond Section 14 could be granted to a consumer under the Act. Thus granting reliefs other than those mentioned in Section 14 is not proper. Similarly, Forum has no power to make any directions beyond the scope of Section 14. In the **Manager, Milk Chilling Centre Vs. Mahboobnagar citizen Council, I (1001) CPJ 219** the National Commission held that the directions given by A.P.State Commisison to A.P.Dairy Development Federation to supply 3% fat at Rs.2/- per half litre etc. was not tenable as it could not be brought within the scope of Section 14.

SOME USEFUL HINTS

- Where no claim for compensation for the deficiency in service was filed, but the complainant sought to recover money, it was held that such a complaint was not maintainable before the Consumer Forum (**E. Aboo Vs. TELCO 1992 (1) CPR 56 NC**)
- There is a necessity to distinguish between deficiency in service and performance of a contract of sale and supply of goods. Suppose if any consumer enters into a contract with a manufacturer or trader for sale and supply of goods and if the said manufacturer or trader fails to supply the goods as per the terms of contract then it would be purely a breach of contract of sale and supply of goods which can not be termed as deficiency in service (**1992 (2) CPR 119**)
- There is no power vested in the Forum to issue direction to the service provider to do or desist from doing anything.

- ‘The Consumer Forums have no powers like Civil Court enjoyed under the provisions of CPC, Order XXXIX, Rules 1 and 2. The Consumer Forums have also no inherent powers as provided under Section 151, CPC. The Forums can pass orders only as enumerated under Section 14 of the Consumer Protection Act, 1986 (**Gujarat Electricity Board Vs. M.B.Anthoni II (1993) CPJ 1013**) Gujarat State Commission
- Imaginary and excessive claim not supported by any logic is liable to be rejected. (**Labh Shankar Jiverambhai Vs. M.D.Reliance Industries Ltd (1991) 2 CPR 177**)
- Damages are awarded for monetary loss as well as for other loss such as pain and suffering, loss of amenities of life and loss of expectancy of life.

In **Radhakrishnan Vs. Manikandanunni II (2001) CPJ 167** the Kerala State Commission held that if an ex-parte order was secured by fraud and abusing the process of court the Forum has the jurisdiction to recall the order. In the case on hand by giving wrong description of the opposite party, the ex-parte order was secured by fraud.

AWARD OF COMPENSATION

In directing the opposite party to remove the defect in goods or to replace the goods with new goods of similar description having no defect or to refund the price to the complainant the Forum may not face any difficulty. But in awarding compensation the Forum has to look into several aspects to meet the ends of justice. As per section 14(1)(d) compensation can be awarded to a consumer only in respect of loss or injury suffered by the consumer due to the negligence of the opposite party. Thus the Forum may award compensation under two conditions;

1. The consumer must have suffered loss or injury; and
2. The loss or injury must have been caused due to the negligence of the opposite party.

The proof of negligence by the opposite party that resulted in loss or injury to the complainant is a *sine qua non* for considering award of compensation. Even in a case where complainant could not produce any evidence, but loss is evident the Redressal Forum should quantify the loss to the best of its judgement as decided by the National Commission in Jaidev Prasad Singh *vs.* Auto Tractor Ltd I (1991) CPJ 34.

At this juncture, it is necessary to understand what the term 'compensation' signifies. The value estimated in money to be paid for loss or injury sustained can be termed as

compensation. Money given as recompense is compensation as per the lexical meaning. The purpose of compensation is making up for the loss or injury caused. The assessment of compensation in a case depends upon the facts and circumstances of the case. If the compensation claimed is hypothetical the Forums are under no obligation to consider such claims.

While other consumer protection legislations prescribe punishment to erring traders who indulge in hoarding, adulteration, fraud, etc. But Consumer Protection Act envisages recompense of the loss or injury caused to consumers. Thus the consumer disputes redressal agencies constituted under the C.P. Act are awarding compensation in addition to other remedies provided under Section 14 of the Act. Section 14(1)(d) provides for awarding compensation, which reads as follows;

“to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit”.

Section 14(1)(hb) empowers the consumer disputes redressal agencies to award compensation to a large number of consumers in a class action complaint. Clause (hb) reads as under:

“to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such

defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilised in such manner as may be prescribed.”

Though clause (d) and clause (hb) deal with award of compensation, clause (hb) provides guidelines in award of compensation whereas clause (d) gives total discretion to the Consumer Forums in awarding compensation. In case of awarding compensation to large number of consumers a minimum amount of five per cent of value of defective goods sold or deficient services provided is prescribed whereas under clause (hb) no such provision is created under clause (d). As such the Fora are expected to exercise the discretion judiciously while fixing compensation.

It is incumbent on any consumer claiming compensation to show that he has suffered loss or injury due to the negligence of the opposite party and as a consequence thereof he suffers loss or injury. If there is no loss or injury suffered by the consumer due to defective goods or deficient services he is not entitled to claim compensation.

In *Bank of Baroda vs. Arvind Modern Pal I* (1996) CPJ 271 the National Commission held that the award of compensation has to be made only on well recognized legal principles governing quantification of damages or compensation on proof of actual loss suffered.

In *Shiv Devi Agarwal vs. Union of India IV* (2003) CPJ 551 Rajasthan State Commission held as under:

“Loss of human being as a member of society and the shock and endless sufferings, caused by the untimely death of a young man to his nears and dears can hardly be measured and compensated in terms of money. Even

then the courts have to evaluate such loss in order to compensate the kith and kins of the departed mortal. In order to estimate the compensation the facts and circumstances of a particular case have to be taken into consideration”.

1. Granting compensation on the basis of assumption without evidence is not proper. III (2001) CPJ 324 KSCDRC.
2. Grant of compensation in addition to interest not permissible III (2001) CPJ 509 TNSCDRC.
3. Though the deceased was not an earning member of the family the complainants who are husband and children of the deceased have lost her love, affection, consortium and companionship. As the children are unmarried they are deprived of her assistance and care till they reach the marriageable ages. Besides, the deceased must be running the house looking after the comforts of her children and her husband and they lost the said assistance and care (III (2001) CPJ 478).
4. In *Garhwal Mondal Bikashnigam & Ors vs. S.M. Agarwal I* (1994) CPJ 1 West Bengal State Commission held that ‘in awarding the compensation, there must be a speaking order and in absence of such speaking order there would be deviations from principles of natural justice.’
5. It is a settled law that a party cannot get double benefit of compensation as well as interest which is also awarded by way of compensation (2004 CTJ 282 Chandigarh UT State Commission).

The word ‘compensation’ is of very wide connotation. It has not been defined in the Act. According to dictionary it means, ‘compensating or being compensated; thing given as

recompense'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be constituted widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him. Lucknow Development Authority *vs.* M.K.Gupta 1994 (1) CPR 569 (SC)

Whenever a Forum directs payment of damages or compensation against the state or state owned organization the ultimate sufferer is the common man. It is the taxpayer's money, which is paid towards such compensation for the inaction of those who are entrusted with such duties. It is therefore, the Supreme Court in Lucknow Development Authority *vs.* M.K.Gupta held that the Forum, while awarding compensation to the consumer, should further direct the department concerned to recover the amount paid as compensation from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries

Bombay Brassie *vs.* Moolchand Agarwal 2003 CTJ 459 (NC) In this case, a car parked at free parking lot of a hotel was stolen. Car was parked in a lot on an assurance that it will be looked after while the customer took food in the hotel. Token was also given by attendant, which reads, "Management does not accept responsibility for any theft/damage/loss". However

consumer received compensation from Insurance Company. The hotel management argued that the complainant was not entitled for the value of the car because in the token itself it was mentioned. But National Commission held that concept of deficiency in service encompasses two aspects; Claim for the amount of actual loss suffered by consumer and the inconvenience, harassment and mental tension undergone. The complainant was awarded compensation of Rs.10,000/- for the inconvenience, harassment and mental tension undergone.

How to assess compensation?

Assessment of compensation by the Redressal Forum is a ticklish job since several factors are to be considered before arriving at a conclusion. It has to be made not arbitrarily but on well-recognized legal principles governing the quantification of damages or compensation. In *Bank of Baroda vs. Arvind Modern Dal & Rice Mill* (1996) 1 CPR 43 the National Commission held that the compensation to be awarded has to be quantified on a rational basis on a consideration of materials produced before the adjudicating Forum. The legal maxim 'Injure non remota cause sed proxima sectatur' which means that in law the immediate or proximate not the remote cause of any event is regarded should be remembered while awarding compensation. The cause and effect must not be too remote.

With regard to medical negligence cases the Forum should take all necessary precautions while awarding compensation because the negligence is attributable purely on scientific grounds. If the medical practitioner is accused of negligence *per se*, the act itself speaks of the negligence of the doctor. In such a case it is not difficult to make the doctor liable. Where a person is guilty of negligence *per se*, no further proof is needed. But, if the negligence is to be proved basing on the medical science and expert opinion it is necessary to take elaborate evidence to find out whether the doctor is negligent.

If it is proved that the doctor is negligent then only the discussion for award of compensation would come up. In a case of medical negligence the Forum should consider medical charges collected by the erring doctor, medical charges to be incurred for further treatment, loss of earnings due to hospitalization and other related expenses in connection with the medical treatment while assessing the compensation. Sometimes the medical negligence might result in permanent disability or partial disability. In order to assess compensation on such matters the method being adopted by Motor Accident Claims Tribunals or the insurance companies to compensate the victim may be followed. At present the Redressal Forums do not uniformly follow the practice. For instance in medical negligence cases where both the eyes are lost some Forums are awarding compensation of Rs.1,00,000 whereas some other Forums are awarding Rs.4,00,000. In all these cases the patients are from lower economic strata only and of the same age group. Such decisions are coming due to lack of uniform procedure. There is need to develop a uniform procedure to avoid large variation in awarding compensation.

It is often seen that the complainants claim different amounts under different heads like interest, professional loss, loss of business, loss of opportunities, mental pain, etc. Though interest on the amount in dispute or professional loss or loss of business can be assessed to a greater extent, loss of opportunities or the mental pain suffered differs from person to person and situation to situation. Usually the complainants put a bold figure for mental pain but do not substantiate how they worked out that figure. It is also difficult for the complainants to quantify the mental pain in terms of money. In such a situation Forum also finds it difficult to convert mental pain into monetary value. It is practically impossible to adduce tangible evidence for claiming compensation for

inconvenience, love and affection, mental agony, etc. In such cases it is the duty of the Redressal Forums to assess and determine, in the light of available evidence, compensation.

In *Ashok Kumar Singh vs. M/s Gujarat Cycles Ltd.* II (1992) CPJ 454 the National Commission observed as under;

“The reason stated by the State Commission that the complainant had not adduced any detailed evidence furnishing particulars of the nature of inconvenience caused to him does not appeal to us as correct or sound. The Forums constituted under the Act have to take a realistic and pragmatic view of matters coming before them and where it is manifest that real inconvenience has been caused, it is the duty of the Forum to determine what would be the reasonable compensation payable in respect of such inconvenience.”

For fixing quantum of compensation, we have to take into account factors such as age of the deceased, income, life expectancy, the minimum expected income or the income of the parents or in the alternative the minimum standard prescribed for paying compensation to the passengers under any statutory provisions [*Geetha Jethani & Ors vs. Air Port of India & Ors* III (2004) CPJ 106 (NC)].

Exemplary Damages

Section 14(1) (d) contains a proviso empowering the Redressal Forum to grant punitive damages in such circumstances, as it deems fit. Punitive damages are also referred as exemplary damages. How punitive/ exemplary damages are different from that of ordinary damages? It is necessary to understand the lexical and legal meanings of these expressions. Damage means a sum of money claimed or awarded in compensation for loss or injury. The dictionary meaning of loss is getting deprived to have some thing by

negligence and it may be a person, thing or amount lost. Generally injury is understood as physical harm but in legal parlance it is damage caused due to wrongful action. Punitive damages mean damages awarded to inflict punishment on the wrong doer. Similarly the word 'exemplary' is used synonym to punitive, which means serving as a warning. Thus, the intention of awarding punitive/exemplary damage is not only to compensate the victim substantially but also to see that such exemplary/punitive damages serve as deterrent on the wrong doer not to repeat the wrong.

The Redressal Forums do not award punitive damages in all cases. In cases where the wrong or injury is of grievous nature and arisen due to willful, malicious and negligent conduct of the opposite party then only the provision of awarding punitive damages come into play. The above are the circumstances that warrant award of punitive or exemplary damages. In *Sovintorg (India) (P) Ltd vs. State Bank of India* (1992) I CPR 833 (NCDRC) the National Commission awarded exemplary damages though there was no provision at that time for award of punitive/exemplary damages. As the effect of exemplary damages brings behavioural change in the erring traders because of its severity or harshness, the Redressal Forum should award exemplary damages keeping in view of the purpose. It should not be taken as if the Forum is allowing undue enrichment of a party, but one should bear in mind the social cause. It helps in curing social evil.

The courts could award several types of damages. Among several types of damages, contemptuous damages and punitive damages could be awarded taking into consideration the conduct of the parties. While awarding contemptuous damages to plaintiff his conduct also will be taken into consideration. Contemptuous damages are always less than the damages that could be awarded in the normal course. Whereas the punitive damages are awarded taking into consideration the malicious

and criminal in nature, the court in such circumstances, award punitive damages in certain category of cases (II 2005 CPJ 302 Karnataka). The Supreme Court in common cause case held as follows: “ Obviously, a small exemplary award would go unnoticed by a rich defendant, while even moderate award might cripple a poor defendant. The conduct of the parties through out the proceedings would also be a relevant consideration in assessing exemplary damages”.

Useful References

In Rajasthan State Electricity Board vs. Trilok Chand I (1991) CPJ 165 the State Commission of Rajasthan held as follows:

“It is the essence of Section 14 (1) (d) of the Act that loss or injury for which the compensation is to be adjudged and awarded, should be found to have been caused by the negligence of the opposite party. The complainant has, therefore, to establish that there was negligence of the opposite party and that as a consequence thereof, loss or injury was suffered by him. It is only in such an event award of compensation is warranted under the provisions of Section 14 (1) (d) of the Act.”

The National Commission in General Manager, S.E. Railways vs. Anand Prasad Sinha I (1991) CPJ 10 (NC) held as under;

“It is established principle of law that compensation awarded must have a rational relation in the nature and extent of the injury, inconvenience or physical and mental sufferings caused to the complainant by the action or omission of the opposite party. No attempt was made by the State Commission to approach the question of quantification of compensation from this perspective.”

Madhya Pradesh State Commission in *Ishwar Chandra Gangrade vs. New India Assurance Co. Ltd.*, observed that when the deceased could not continue expert treatment for want of funds, due to illegal denial by insurer and insured had to come back to India, where she died, the insurer was responsible for the untimely death. Insurer was liable to pay compensation to legal heirs of the deceased.

In *District Manager, Telephones vs. Tarun Bhar Kaur* (1991) CPR 171 (NC) it was held that it was not mandatory or obligatory on the part of the complainant to ask for a specific relief and the Redressal Forums were not debarred from granting reliefs not prayed for by the complainant provided the same were justified on merit.

In *Smt. Kailash Kumari vs. Narendra Electronics II* (1991) CPJ 279 (NC) the National Commission observed that it was not always possible to provide tangible evidence regarding the inconvenience and mental suffering caused on account of a defective product or a deficient service.

In *Charan Singh vs. Healing Touch Hospital*, 2000 7 SCC 668 the Supreme Court observed as follows;

“While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual but which also at the same time aims to bring about a qualitative change in the attitude of the service provider. Indeed calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take in to account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant

compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.”

Criteria for determination of compensation cannot be prescribed for determining the amount of compensation in such like cases as decided by the National Commission in *Sau Madhuri vs. Dr.Rajendra*. Each case has to be adjudged by taking into account the attending circumstances and also attenuating circumstances, if any.

In *Lucknow Development Authority vs. M.K.Gupta* case Supreme Court discussed the expression ‘compensation’. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate the consumer for injustice suffered by him.

National Commission held that “the District Forum and the State Commission were not justified in awarding the compensation for mental agony and interest when adequate separate compensation had already been awarded”. *Godrej Soaps Ltd vs. Vijay Govind Sarpotdar II* (2001) CPJ 12

Where there was non-delivery of shares within reasonable time and withholding the shares in exchange of 100 shares, deficiency in service by opposite party was established. District Forum had awarded compensation of Rs.10,000 which was enhanced by Chandigarh State Commission to Rs.72,000 in appeal. *Sanjeev Kumar Arora vs. SLM Maneklal Industries Ltd, II* (2002) CPJ 230

The Opposite party found the model of the camera given to the complainant a defective model. The allegation of the complainant is that the model, which is being given to her, is

not meant for sale. It is to be assumed that it is a substandard model and held that complainant was entitled to refund of price of the camera along with interest @ Rs.18 per cent p.a. from 1.5.1992 till the date of repayment and the complainant was also entitled for damages for Rs.15,000. *Lalita Badhwar vs. Pradeep Kumar Kurma*, 1996 CCJ 384 (Delhi)

The draft was in favour of the educational institution. The payee bank at Calcutta could have taken the risk and made the payment of Rs.150 when they say that the draft was in a proper printed form bearing the name of State Bank of India and also signed by branch manager. Therefore, not only there was carelessness but utter negligence of the bank at Calcutta. Therefore, the services rendered by the Bank were deficient to the extent of total negligence. Therefore, a sum of Rs.15,000 was awarded by way of damages. *Bhupendra Kumar Nanalal Rajguru vs. State Bank of India* 1993 CCJ 28

DESU served on the complainant three electricity bills demanding more than a lakh of rupees as arrears without disclosing the details of the arrears and requiring him to pay the same at extremely short notice of three days – complainant asked for the details of the arrears and instead of supplying the details, his electricity connection was disconnected even before the last date mentioned on the bill for payment – State Commission held that DESU was deficient in its service and electricity was disconnected malafide in order to harass the complainant and awarded compensation of Rs.7,000. *Y.N.Gupta vs. DESU I* (1993) CPJ 25 (NC)

The complainant delivered a packet containing share certificates of a limited company to courier for transmission to the address. The packet was lost in transit. The complainant filed the complaint for damages and claimed Rs.20,000. The District Forum awarded Rs.5,000 only. But in appeal, it was reduced to Rs.2500 on the ground that the respondent has not

given the details of the amount, which he had to spend for getting copies of the share scrips. *Ontime Express Pvt Ltd vs. Harsimram Singh Sandhu In* (1993) CPJ 133 (Delhi)

The awards of compensation by Forums established under the Act have to be made only on well-recognized legal principles governing the quantification of damages or compensation. The compensation to be awarded has to be quantified on a rational basis on a consideration of materials produced before the adjudicating Forum showing the extent of injury suffered, and the manner in which and the extent to which monetary loss has been caused thereby to the complainant. *Commercial Officer, O/o TDM vs. Bihar State Ware Housing Corporation I* (1991) CPJ 42 (NC)

Skypack Couriers Ltd vs. Loyal Machine works Ltd I (1996) CPJ 113 (NC) the State Commission awarded a compensation for the loss of drafts in transit, of Rs.25,000. On appeal compensation for mental pain and agony was reduced to Rs.1,000 by the National Commission.

In *Shyamlal Raina vs. United India Insurance Co.* 1996 (2) CLT 66 J&K. In this case Insurance Company with its usual work culture subjected the complainant to mental torture and agony and has subjected him to humiliation and indignity. The Company being sole Arbitrator to determine the validity of the contract and to determine its own liability has taken full advantage of unreasonable, unconscionable and unilateral provisions of the contract. A sum of Rs.25,000 was allowed as compensation to the complainant.

In a case against *V.P.G Housing Tamilnadu State Commission* held as follows;

“The complainant is certainly entitled to the refund of the amount with interest thereon at 18 per cent as claimed. The complainant must have been put to much mental pain and agony. She has also been put to

financial loss as prices have escalated and it will not be possible for her to secure alternative plots for the same value now.” Award of compensation of Rs.1,00,000 was ordered.(Shanta H Chipalkatti *vs.* V.G.P.Housing (P) Ltd 1996 CCJ 335 (TN))

Jija S.Hari Singh *vs.* Bijay Anand Raghavan I 1996) CPJ 340 (Karnataka)

In this case the complainant claimed a sum of Rupees three lakh against the courier service for mental agony and suffering undergone by her and also for having lost an opportunity of presenting her papers in the international conference. The complainant has proved how she had undergone mental agony and suffering. In view of this the Karnataka State Commission held that it was just and proper to award a compensation of Rs.5000 to the complainant.

The Consumer Disputes Redressal Agencies are required to grant compensation on the basis of deficiency in service. The status of either of the parties or its paying capacity is not a basis for awarding of compensation. UT Chandigarh (2005 CTJ 1160 CP).

If consumers are compensated on account of loss of business then there will be no end to it. The object of Consumer Protection Act is only to provide compensation on account of deficiency in service and not by way of loss of business. If consumers are compensated on account of loss of business then there will be no end and providers of service will go bankrupt. Industrialists, businessmen will claim crores of rupees from the provider of service for disconnection of telephone for a week or so. Delhi State Commission (2005 CTJ 1172 CP).

COSTS

Some expenses incurred by the complainant/deeree holder for pursuing the litigation in a court of law are awarded as costs. The costs incurred prior to filing of a complaint before Consumer Forum will not be taken into consideration except the legal notice issued to the other party. It is an established principle of law that the court should grant only reasonable costs to meet the litigation expenses. In the name of costs Consumer Forums should not over burden the Judgment Debtor.

At this juncture it is better to know the lexical meaning of cost, which denotes an expenditure of time, effort, etc. But in the legal sense cost denotes legal expenses, especially those allowed in favour of winning party or against the losing party in a suit. Thus one has to carefully consider what constitute legal expenses while awarding costs.

Prior to 1993 Consumer Forums were not empowered to award costs to parties. In 1993 Consumer Protection Act was amended and clause (i) was inserted to section 14, which reads as follows:

- (i) To provide for adequate costs to parties.

The above clause enables the Consumer Forums to award costs to the parties.

Section 35: Costs: (1) subject to such conditions and limitation as may be prescribed, and to the provision of any law for the time being in force, the costs of and incident to all suits shall in the discretion of the court, and the court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing.

It is the general practice in civil courts that within five days on the pronouncement of judgement both the parties will file a separate cost memo. These costs are mentioned in the decree on behalf of both the parties. Though it is only the winning party who is entitled to costs, in case the other party prefers an appeal and becomes a successful appellant costs are awarded to that party according to the cost memo filed. Thus it is necessary to show the costs incurred by both the parties in the decree. But in the Consumer Forums such practice is not prevalent. In the final order even without filing a cost memo the Forums on their own award costs at their discretion. According to a study made recently there is dissatisfaction amongst consumers as the Consumer Forums are awarding very meager amount as costs. As the Consumer Protection Act envisages adequate costs to be awarded to the parties, members are under obligation to arrive at adequate costs.

Section 35 A: Compensatory costs in respect of false or vexatious claims or defences: (1) If in any suit or other proceeding, including an execution proceeding but excluding an appeal or a revision, any party objects to the claim or defence on the ground that the claim or defence or any part

of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter as against the objector such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the court if it so thinks fit, may after recording its reason for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

(Note: Provisos not included, as they are not relevant to Consumer Forums)

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

Section 35B: Costs for causing delay: (1) If, on any date fixed for the hearing of a suit any step therein, a party to the suit: -

- (a) fails to take the step which he was required by or under this code to take on that date, or
- (b) obtains an adjournment for taking such step or for producing evidence or any other ground,

the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution.

(2) The costs, ordered to be paid under Sub- Section (1) shall not if paid, be included in the costs awarded in the decree passed in the suit, but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.

Costs occasioned by adjournments: In the chapter ‘adjournments’ this matter is discussed at length. Further in the Regulations made by the National Commission (Annexure V) the costs to be imposed for causing delay of the proceedings is clearly given.

Legal Expenses

Costs relating to Commissioners appointments: During the trials the parties may file a petition in the court for appointment of a Commissioner. After putting the other party on notice the court may allow the petition and appoint an advocate Commissioner or any other person technically qualified to under take such job as Commissioner on payment of such fees to the Commissioner by the party asking for appointment of a commission.

Petition Charges: For filing complaint or counter or version or affidavit or any other paper for the purpose of his claim the litigant has to necessarily pay for typing, copying, etc. The petitioner (Decree Holder) is entitled for such costs.

Complaint fee: Complainants filing their complaints in Consumer Forums are required to pay charges along with the complaint to the Consumer Forums. The complainants in case they win the case are entitled to get back such fee paid to the Forum from the Judgement Debtor as costs.

Fee paid to advocate: In case the complainant engages an advocate he is entitled to receive the advocate. It is necessary to obtain a receipt from the advocate for the fee paid. Advocate fee shall be paid as per the Advocate Fee Rules.

Substitute Service by paper publication: Notices served to the opposite parties by the Forum are returned unserved; the complainant may pray the Forum for substitute service through paper publication. Expenses incurred for such publication are considered as legal expenses and form part of costs that can be awarded to the party. Similarly Bata paid to the court for service of notice to the other parties are also included in costs.

Charges paid to appropriate laboratory: In case of defect in goods, the goods may be required to be sent for analysis to an appropriate laboratory. In such a case the complainant is required to pay charges payable to the laboratory. Such charges are also to be included in costs.

Costs that may not be allowed: Charges incurred for making telephone calls, or local conveyance, or for hotel accommodation, or other miscellaneous expenses may not be allowed by way of costs.

Whether costs are permissible under sections 25 and 27: When costs are allowed in original petitions, whether the parties are entitled to such costs in execution or other petitions? Obviously, the answer is yes. Courts are empowered to award costs on any petition at its discretion. If court is satisfied that it is necessary to award costs on such petition in the interest of justice, certainly it could award costs. Law does

not prevent courts to exercise their discretion on this matter. The only requirement for award of costs is the entitlement of a party to receive such costs. In Consumer Forums when a decree holder files an execution petition or a petition under Section 27 is he entitled for costs on such petitions? Though there is no specific provision either under section 25 or Section 27 to award costs, it is at the discretion of Consumer Forums to award costs as envisaged under Section 14 (i).

Case Law

Exemplary Costs: Costs imposed on false and frivolous complaints or petitions filed just to harass the other party. By filing such petitions the petitioners are wasting the precious time of the courts. Under such circumstances the court may think fit to impose exemplary costs on the petitioner.

Dr. Ganesh Singh Chouhan & Another vs. Chief Medical Officer Allahabad & Another (1996) II CPR 264(U.P.CDRC) The nature of relief claimed in the complaint indicated utter disregard for reasonableness on the part of the complainants. The Uttar Pradesh State Commission opined that such inflated claims have been put forward only on account of the fact that no court fee is payable for proceedings filed with a view to harass the opposite parties impleaded in it. Such complaints are not to be encouraged and, in fact, the tendency on the part of complainants of filing such complaints should be curbed to avoid over-loading of the docket of the infrastructurally deficient State Commission which is, even otherwise, highly over-loaded due to a large number of orders emanating from more than sixty District Forums existing in the state being brought before the Commission in hundreds every month in the form of appeals and revisions, etc. In these circumstances, the State Commission felt that the complainant should be made to pay exemplary costs of Rs. 5, 000.

Nandita Shammic vs DLF Universal Ltd. 2003.to 2006. (NC) by Justice M.B.Shah. Revision petition dismissed and the petitioner shall pay costs of Rs.20,000 out of which Rs.5,000 shall be paid to Mr.K.L. Nandwani; the *amicus curiae* and the rest amount shall be deposited with NCDRC Legal Aid Fund.

Heavy costs

Force Motors Ltd vs Ajay Ashok & Anr. Decided by National Commission on 13.2.2006 First Appeal No.441/2005. The appellant shall pay Rs.1 lakh as costs to the complainant. This cost is imposed not only for delay but also for making false statements before this commission.

DCM Shriram Consolidated Ltd vs National Insurance Co., decided by National Commission on 16.11.05.

The Insurance Co is directed to refund the amount of Rs.26,68,530 with interest at the rate of 9 per cent p.a from the date of recovery till payment. The insurance co. shall also pay Rs.20,000 as costs, to be deposited with the NCDRC Legal Fund.

CONDUCT OF PROCEEDINGS

Section 14 provides guidelines for conduct of proceedings. The relevant portion of Section 14 is reproduced below:

- “(1) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

- (2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

- (3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government”.

Every Consumer Forum except National Commission

constituted with three members and one of them is the President. If President is on leave the senior member of the Forum would preside over the bench and conduct proceedings along with another member. Thus minimum two members are required to constitute a bench. Section 2A of the Act says that every order shall be signed by its President and Member or Members who conducted the proceedings. It is mandatory that the President is qualified to be a District Judge. The Senior Member of a District Forum may not be having qualification as mentioned above. In view of this whether the order passed by two lay members without the junction of the President is legally sustainable is a question that requires careful consideration. Section 14(2) deals with issuance of orders by the Forums. In order to understand the implications it is necessary to go through the changes made to this sub-section.

When the Consumer Protection Act came into force in 1987. Section 14(2) of the principal Act was as follows:

“Every order made by the District Forum under sub-section (1) shall be signed by the members constituting it and, if there is any difference of opinion, the order of the majority of members constituting it shall be the order of the District Forum”.

The above provision lacks clarity in the sense whether all the three members should sign the order or it would be sufficient if majority sign the order. The National Commission considered this issue in *Maruthi Udyog Ltd vs. V.K.Jain*. It was held that every order passed by the Forum had to be signed by all three members. Further it was not competent for a bench consisting of only two members or even a single member of a District Forum to validly hear and dispose of any complaint filed before the District Forum.

But the legal position changed from 15 June 1991 when

the amended Act came into force. According to this amended provision every proceeding shall be conducted by the President of the District Forum and at least one member thereof sitting together. It means that the case must be heard and disposed of by at least two members of the District Forum and one of them should be President of the Forum. Thus it is mandatory to conduct the proceedings by the President. In *Hindusthan Lever Ltd vs. State Consumer Redressal Forum* (1996) II CPJ 103 the Calcutta High Court held that the President along with at least one member of the District Forum or the State Commission, as the case might be, would form the quorum. Presence of the President for conducting the proceeding and his signature in the order is, therefore, a must.

Prior to 2002 amendments this proviso to Section 14(2) was as follows:

“Provided that where the member, for any reason is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo”

As per the provision in the principal Act if any member completes his term of office or absents for a considerable period, the cases, which that member partly heard, had come to a halt. But the subsequent amendment enabled the Forum to conduct such proceeding from the beginning by the rest of the members.

But the 2002 amendments restructured this proviso as under:

“Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member”.

This amendment enables the Forum to continue the

proceeding. Thus there is no need to conduct such proceeding de novo, paving way for expeditious disposal.

If two members of the District Forum pass an order without the junction of the President, that order is null and void because Sub-Section (2A) mandates that every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding.

Rajasthan State Commission in *UCO Bank vs. Kistur Ram Dholia* (1993) II CPR 2 held that the order of the District Forum was invalid as it found that the lady member of the District Forum did not hear the argument still she signed the order. As per the Act the order need to be signed by Forum President and the member or members who conducted the proceeding.

In contrast to the above case, the Haryana State Commission in *Subash Jindal vs. Norton Motors* (1992) I CPJ 113 held that the order of the District Forum suffers from illegality because in this case three members including the President conducted the proceedings but only two members signed the order.

Where the President and one member conduct the proceeding and they differ on any point, the provision says that such order must be referred to the third member and the opinion of the majority shall be the order of the Forum. In *Smt Luxmi Singhania vs. Smt Rani Debi Lohia* (1992) I CPR 109 the National Commission held that any order passed by only single member of the District Forum or State Commission is not warranted. Similarly the opinion of the President of the Forum does not have over riding effect on the divergent opinion expressed by the other member who heard the case. President alone cannot dismiss the complaint as held by Delhi State Commission in *Pankaj vs. Chairman, Central Secondary Education Board* (1993) I CPR 711

Chandra Cold Storage Pvt Ltd vs. Hari Lal Mahto, 1996 2 CPR 288 in an appeal before Bihar State Commission it was found from the order sheets that the proceedings in these cases were conducted by the Forum President alone on all the dates including the date on which the parties were heard. But President and the other two members signed the order. But it did not appear from the order sheets of these cases that the two members whose signatures appeared on the impugned order ever participated in conducting the proceedings along with the President and heard the parties. Basing on the information elicited from the order sheets the State Commission set aside the impugned order of the District Forum.

Orissa State Commission in *Natraj Rice Mills (P) Ltd, vs. Orissa State Electricity Board* (1991) 2 CPR 230 has held as follows:

“We may only observe that District Forum consists of President and Members. We find from the order sheet that applications under Sections 25 and 27 have been dealt with by the President only. The President can issue notice. But individually cannot pass any order. He could not have finally disposed of the petition under Sec 25 and Sec 27 on 9.11.1990. This is the case where the provisions of the Act have been misutilized by the complainant”.

Section 14(2) mandates that in absence of President the proceeding should not be conducted. Out of the rest of two members at least one member should sit together with President while the proceedings are being held. In case of inability of a member to conduct a proceeding till it is completed, the President and other member shall continue the proceeding from the stage at which that member last heard it.

The members who conducted the proceedings should only sign the order. The Rajasthan State Commission in *Rajasthan State Electricity Board vs. Subhakaran Dedha* 1993 (1) CPR 505 held that when the member who was not present at the time of arguments signs order of District Forum, the order is invalid. If President and two members sign the order, but President and one member heard the argument such order is invalid. Similarly if all the three members conduct the proceedings and order was signed by only two members the order is invalid. The President of the District Forum alone is not competent to pass an order as per Section 14(2) Where the proceedings have been conducted by the President and two members, the President writes an order and the members write a separate order, then order signed by majority is the order. It is not necessary that all the members of the District Forum should participate in the hearing of a case or in signing the order. Majority of the members, i.e., two out of three members can conduct the proceedings, one of whom shall be the President. It is thus clear that conducting the proceedings by the President is mandatory. The National Commission in *H.K.Purohit vs. Registrar, University of Jodhpur* (1996) I CPR 96 (NC) held that a failure to comply with this requirement (presence of President) would invalidate the orders. Calcutta High Court also held in *Hindusthan Lever Ltd vs. State Consumer Disputes Redressal Forum* (1996) 11 CPJ 103 that President has to conduct the proceeding sitting with at least one member.

Order passed by the President or a member sitting singly or by two members without the junction of the President or not signed by the President is not valid.

As per Section 14(2) every order made by the District Forum under sub-section (1) shall be signed by all the members constituting it and, if there is any difference of opinion, the

order of majority of the members constituting it shall be the order of the District Forum.

Section 14(2A) provides procedure in case of difference on any point or points between the members where the proceeding is conducted by the President and one member. The differing members shall state the point or points on which they differ and refer the same to the third member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

Procedure in National Commission:

Section 15A: (1) Every proceeding of the National Commission shall be conducted by the President and at least two members thereof sitting together:

Provided that where the member or members for any reason are unable to conduct the proceeding till it is completed, the President shall conduct such proceeding *de novo*.

(2) Every order made by the National Commission be signed by the President and at least two members who conducted the proceeding and if there is any difference of opinion among themselves, the opinion of majority shall be the order of the National Commission:

Provided that where the proceeding is conducted by the President and three members thereof and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and such point or points shall be decided according to the opinion of the majority of the National Commission.

Members Passing Different Orders

It is quite but natural that the members may differ with each other on certain issues while making an order. Members

pass orders with absolute freedom and hence there bound to be differences. The perceptual differences of members ultimately result in passing different orders. Pronouncing different orders at times may result in a legal dead lock. The following are certain decisions, which provide guidelines to members on such crucial issues.

Where the case was heard by President and two members and if two members refused to sign the order where upon the President announces the order it is held by the National Commission that the order or opinion purported to have been written by the said two members cannot be said to be an order.

If the order is signed by the President and two Members but the arguments were heard by the President and one Member such order is invalid. In other words if the Member who was not present at the time of hearing the order signs the order of the District Forum is invalid.

In subsequent amendments to Section 14, there is no requirement to conduct the proceedings by all the three members but the presence of President is made mandatory. The President can conduct proceeding with only one Member.

Under the provision of C.P. Act no single member could pass any order unless there are minimum two members of the Forum. But single member of the District Forum released the judgment-debtor in the original case on bail for Rs.50,000 on personal surety bond executed by judgment-debtor. On that day the President was away from head quarters and the lady member was absent. The matter went for a revision to Orissa State Commission, which held that there was nothing illegal for the single member to release the judgment-debtor. One cannot be faulted with merely because it was passed by the single member, the matter being urgent. Had he not exercised his discretion the judgment-debtor would have been taken to

confinement. There is no material to hold that such an order has been passed for any extraneous consideration. III (2004) CPJ 54 Md.Yunus H.K.Sipia *vs.* V.Krishna Prasad)

Oriental Insurance Company Ltd., *vs.* Dharmendra Kumar Lall III (1999) CPJ 20 (NC) The facts of the case are that the chairman of the Rajasthan State Commisison Mr. Justice N.C.Sharma dictated the order signed it and sent it to Mrs. Firoza Bano, another Member of the Commission. It is not known when it was sent to her. But Mrs. Firoza Bano wrote on the body of the copy of the judgment "*I do not agree with this judgment I will write separate judgment*" and signed on 12.5.1997. There is nothing to indicate that the judgement of the chairman was placed before the third member Dr. Subash Purohit. Justice Mr. N.C. Sharma retired from the Commission shortly thereafter and the Commission was reconstituted in September 1997. Mrs.Firoza Bano on 19.12.1997 wrote a dissenting judgment and sent it to 3rd member Dr. Subash Purohit. No order sheet has been maintained since 12.8.1996 about this case and there is nothing in the order sheet regarding the date of the judgement of Mrs. Firoza Bano. There is also nothing on record to indicate whether the copy of the order passed by the Chairman was at any stage sent to Dr.Subash Purohit. There is no order passed by the Commission that in view of the majority of the judgement, the complaint is allowed. Dr.Subash Purohit was apparently unaware of the judgement delivered by the president. The third member who heard the case was unaware of the judgement of the President. But order communicated to the parties with the knowledge of the new president. On an appeal, the National Commission held that the majority judgement passed on 19.12.1997 is a nullity. The appeal is allowed and the State Commission is advised to rehear the case *de novo* in accordance with law.

Members have no jurisdiction to pass different orders at different dates convenient to them without reference to each other. Orders have to be passed on same day simultaneously (IV (2004) CPJ 504 Tamilnadu State Commission).

In *Oriental Insurance Co. Ltd., vs. Smt Tripta Sharma* III (2002) CPJ 402 (NC) the National Commission set aside the order of the State Commission which was signed by two members and did not bear the signature of the president.

In *Kaur Singh Brar vs. Khurmi Gun Works & Anr* I (2002) CPJ 155 the Punjab State Commission held as under:

“First of all, the original order does not show as to whether besides the President, other members were present in the proceeding or not. If we take up from the copy of the order, which has been produced in the appeal, then presence of the two members is shown. But the order is signed only by the President and not any other member. In any case the order of the District Forum is against specific provisions of the Act and Rules and is without jurisdiction.

In *Shekhar Agrawal vs. Mohd Sajid* the validity of Rule 6 sub-rules (9) and (10) authorizing seniormost member of State Commission to discharge the functions in absence of President was challenged before the Madhya Pradesh High Court. It is held that the object of such rule is to keep the State Commission functional in absence of President and hence the rule is not *ultra vires*.

In *Sub-Divisional Officer vs. J.N.Barowalia* III (2001) CPJ 136, Himachal Pradesh State Commission set aside the order of the District Forum in view of its being signed only by President without signature of either Member. Section 14(2) prescribed that every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and

at least one member thereof sitting together.” It is mandatory that the President along with at least one out of two members of the District Forum should conduct the proceedings.

New India Assurance Co. Ltd & Anr vs. N.Ramalingam I (2005) CPJ 4 8 Tamilnadu State Commission. In this case, the Forum consisting of three Members have come out with two different verdicts. While President dismissed the complaint, the other two members accepted the complaint. The verdict of the dissenting Members is neither rendered simultaneously nor gives any reasons for differing from the view taken by the President. The Tamilnadu State Commission held that in such circumstances the verdict given by the majority is the order of the Forum. But to keep the record straight, the State Commission set aside both the verdicts and remitted back to the Forum for fresh disposal in accordance with law.

In case of difference of opinion between two members who heard the case: Tamilnadu State Commission discussed the issue in *LIC of India vs. S. Kokila IV* (2004) CPJ 504 and made the following observations;

“Here there is no clue in the order or in the notes paper to show that the proceeding here was conducted by the President and one member alone and that the other member was absent. But it is clear that the orders passed by the President and the members were not passed on the same day or simultaneously. Four days after the order passed by the President the member passed her dissenting order while the other member passed the order on 12.7.99 accepting the dissenting order. It is not known whether on the date when the member passed the dissenting order, she heard the counsel on either side of the parties or made it known to the President. Similarly, we have nothing to show when the second

member, who passed his order on 12.7. 1999, heard the parties on that day. The entire procedure followed by the lower Forum is not keeping in with the accepted norms of procedures. There is no jurisdiction for members to pass different orders at dates convenient to them without reference to each other. The orders have to be passed on the same day and simultaneously. If the President and the Member do not agree, it has to be referred to the other member by them by way of order of reference. But there is no order of reference by the President and the member to the third member. Then, alone the third member can pass an order either accepting or dissenting either on the same day or later on and after hearing both the parties and after giving notice. But all these judicial precautions or purposeful procedures are given a go-bye in this case. Therefore, in our opinion, the order passed by the lower Forum runs counter to Section 14(2A) in every respect. Therefore, an incurable defect has set in, in the order that can be rectified only by setting aside the order passed by the members and the President and remitting the matter back for fresh disposal in accordance with the law. Case remanded to District Forum.

In *The District Manager, Department of Telecommunication, Erode vs. S.Chandra Sekhar I* (1994) CPJ 28 (NC): President of the Forum and two members heard the arguments. Though two members refused to sign the order president announced the order. In appeal State Commission held that the order passed by the president was minority order and had no value. It was further held that the opinion of the dissenting members as the order of the majority. In the revision the National Commission held as under;

“ the president of the District Forum ought not to have announced the order written by him alone till the other members constituting the Forum had either agreed to that order or had a dissenting order. Therefore there is no legal order passed by the District Forum. The State Commission was in error in holding the ‘opinion’ of the dissenting members as the order of the majority. The National Commission further discussed whether the order/opinion purported to have been written by the two members could be said to be an order? It was held that the order purported to have been written by the two members cannot be said to be an order as it was neither pronounced in the open court nor it was communicated to the parties. Strictly speaking it could not be even termed as order.”

The ultimate para of that order reads as follows:

“When taken into account, the revised rent is to be collected by the respondent from the date of detection of the error and its communication to the petitioner. We are of the opinion that the respondent has no authority to collect the revised rent from the date of installation”

This order only expresses an opinion of the two members. It cannot be said to be an order of binding nature. The members have not said that the complaint of the petitioner should be allowed or partly allowed or dismissed meaning thereby that it is not an enforceable order. Further, this opinion of the two members does not even bear any date and it is not clear when this opinion was placed on the complaint file of the District Forum. The matter is remanded to the District Forum to hear the case afresh and pass a proper order.

National Commission in Divisional Manager, New India

Assurance Co. Ltd vs. Jagdish Lal Chhabra II (2003) CPJ 123 (NC) held that as Section 14(2A) provides that every order made by District Forum shall be signed by its President and the Member or Members who conducted the proceedings. Since the impugned order was not signed by the president of the District Forum, it is bad in law and the revision, thus, deserve to be allowed. The case was remanded back to the District Forum for deciding afresh on merits.

In *M/s. Ghambhirmal Kishore Chand vs. Oreintal Insurance Co. Ltd.*, the Madhya Pradesh State Commission held that the order passed by two members in non est. The arguments in this case were heard by the president and the members on 25.3.1997 and the case was fixed for pronouncing the judgment on 2.4.1997. Section 14(2A) of the C.P. Act lays down that every order made by the District Forum under subsection (1) shall be signed by its president and the member or members who conducted the proceeding. On the date of the pronouncement of the judgment, the president of the District Forum was on leave. He has not signed on the judgment nor has written own judgment. He has not given a note of disagreement. The State Commission held that when the proceedings were conducted by the president sitting along with two learned members the order could not have been pronounced by the two members alone.

In *New Lite Dyers and Dry Cleaners vs. Bharat Bhushan, I* (2001) CPJ 333 the Himachal Pradesh State Commission held as follows;

“ A perusal of the various orders passed by the District Forum indicate that on the very first date of appearance of the appellant before it, the learned District Forum proceeded to make up its mind about the nature of the dispute between the parties by holding it to be a trivial

matter. Not only that, the parties were ordered to settle the disputes amicably on or before the next date. Thereafter the sequence of the orders passed on a subsequent dates clearly spells out the partisan approach adopted by the learned District Forum in the present case suffice it to say, in none of the orders there is an indication that even a single opportunity was afforded to the appellant as opposite party before it by the District Forum to file its reply to the complaint of the respondent. Rather, it was being compelled to settle the dispute with the complainant. To say the least this approach of the learned District Forum must be strongly deprecated. We find that the impugned order is not sustainable. The same having been passed contrary to all norms of legal procedure as enshrined in our constitution as well as in glaring violation of the rules of natural justice which enjoin that no party to a cause or lis should be condemned unheard and without being given any opportunity to meet the case set-up by the opposite party which is exactly what has happened in the present case.”

ART OF WRITING JUDGEMENTS

Judgement/order, or by whatever name it is called, is the outcome of a judicial process. The judicial process can be described as an act of churning the allegations and counter allegations with evidence to bring the truth on to the surface. Basing on the truth so extracted, justice is dispensed to the parties through judgement. It is therefore imperative to the judicial officer or any other person performing such duties to consider the interests of all parties concerned. Otherwise, injustice may be caused to the cause of justice. Judgement conveys the perceptive intellect and maturity of the judicial officer. Judgement is the written version of communication of court's findings and its decision. As such the author (member) must adopt all techniques of effective communication while writing the order.

Orders are of different kinds. It may be an order on an interlocutory application (IA), interim order, final order, enforcement order (section 25) or penalty order (section 27). Whatever might be the nature of order, it must be a speaking order in the sense that the order itself must speak why such an order is made. As already discussed, order is a communication of Forum's decision and as such the parties in dispute, for that matter, any other person reading the order must understand easily what the order conveys. There should not be any ambiguity. This communication (order) should be

proper and precise. Using lengthy and complex sentences or using inappropriate or double meaning words may create communication barriers. If the order is not communicative the very purpose of writing an order gets defeated.

A good reader is a good author, as a good listener is a good communicator. Member should pay rapt attention and give active listening to what the party says at the time of hearing and also when the arguments are advanced. Good reading of various documents filed by the parties enable the author to write the order judiciously. After going through each and every document filed the member with due diligence frame the issues or identify the points for discussion. Basing on the available evidence on record the points are to be discussed. Without the support of evidence no discussion will be appealing. The member has to remember that pleadings are no evidence. Any order passed without discussion on vital documents filed is not legally justifiable. A thorough reading of all papers filed in the consumer complaint would enable the member to write the order correctly.

Generally orders are written in English. Unless the author is proficient in English language he cannot write the order briefly and precisely. Hence, it is necessary to have command over English. Member should not hesitate to receive training in English writing skills, if necessary. It is also suggested that those who wish to develop their English vocabulary must refer English Dictionary as often as possible. It not only strengthens the language base but also enables the person to choose the right word for the context. Appropriate word adds strength to the expression, whereas inappropriate word leads to confusion. It is also necessary to acquaint one self with the legal jargon before using it.

The elegance of the order depends on the way the issues are discussed. The contents of various documents received in

that particular case would provide strength to these discussions. Any way the Forum comes to a conclusion basing on the truth. In order to extract and establish truth the member should apply his investigative mind to probe into various documents, recitals in the complaint and counter and also on the conduct of the parties. It is not that all complainants are consumers or all complaints are genuine. Similarly the opposite parties produce agreements, unilaterally made to escape from the liability. This is where the member should be more investigative in his approach and bring the hidden truth to the surface. Though detailed discussions are important, very lengthy discussions at times are superfluous. One should avoid unnecessary and irrelevant discussion. The quality of judgement depends mainly on the way the issues are discussed to arrive at the final conclusion.

Another important factor to be kept in mind while writing judgement is brevity. The order should always be brief and to the point. The quality of the order is not gazed on the number of pages but by its language, communicative ability, judicious approach and above all its brevity. Even the National Commission in its recent regulations insisted upon short orders. The regulation prescribes that the order of a Consumer Forum disposing of a matter shall be as short and precise as practicable and unnecessary long quotations from the judgements of the higher courts or otherwise shall be avoided. In fact, there is no parameter to fix the length of the order. Generally, the length of the order depends upon the number of parties mentioned in the complaint; number of documents relevant to the discussions, number of issues that come up for consideration and number of reported cases relied upon by each party. If the number is more, invariably the order becomes lengthy. Under these circumstances the author does not have control over these variables. However, the author can avoid

repetition of discussions, unless it is necessary. There is no need to describe all the documents filed in the order, as the list of documents with description is mentioned at the end of the order anyway. It should be born in mind that for the sake of short order one should not sacrifice the discussion in detail, on the issues that arise for consideration. But at the same time one should avoid unnecessary discussions. The author should scrupulously avoid reproducing in the order what all written in the complaint and counter except those recitals, which add strength to the findings or discussions.

The author may confront with several legal issues while preparing the order. Whenever some legal issues are under consideration, the member should, with confidence, discuss the legal provisions by application of his legal knowledge rather than simply depending on the pleadings. If the author tries to evade discussion on complicated questions of law, the order exposes the author's incompetence. Hence, it is necessary for the member to acquire legal knowledge by perusing the relevant enactments and rules of practice besides the decisions of superior courts. Habit of reading the above material would enable the author to confidently discuss on the legal issues. If the author can quote appropriate legal maxims in the order, to add emphasis, it not only adds flavour to the order but also reflects the proficiency of the legal knowledge of the member.

The order should be clear, unambiguous and easily understandable, particularly, to the parties concerned. In order to achieve the clarity the author must use simple words avoiding words with double meanings. For instance the word 'order' in the legal parlance means judgement or order of the court. But this word has twenty different lexical meanings. If the author does not know the true meaning of a word he should sedulously avoid using that word.

As far as possible better to avoid pompous or extravagant language. Use of more negative words in a sentence may lead to confusion. It is mind boggling to the reader and acquires additional effort to understand the mind of the author. The author must necessarily read the order, on completion, once or twice, if necessary, even more to remove ambiguity, if any.

An order of the Forum may benefit individual parties. But the author should not look into the matter in a narrow compass. It is not necessary for the author to bother in whose favour the order has gone. It is certain that the order would go either in favour of the complainant or opposite party. It is not a matter of concern to the author. He should look beyond these individuals, who are mentioned in the dispute, so that the author can visualise the impact of his order on the society. Some times an order might benefit society than individuals. For instance the Supreme Court's judgement in *M.K. Gupta vs. Lucknow Development Authority* or in *Indian Medical Association vs. V.P.Shanta* or the National Commission's judgement in *Harjot Ahluwalia vs. Spring Meadows Hospital* or Delhi State Commission's judgement against financial companies or A.P. State Commission's judgement against Railways benefit the society at large in addition to some individuals who filed the complaints. An order must do good to the society.

In some of the appeals it is seen that the appellate courts, while setting aside the impugned orders, are commenting that the lower courts are not applying mind. Application of mind is a pre-requisite in deciding cases. If an order is written without application of mind, legal mistakes or factual mistakes bound to occur. Such mistakes would hamper the cause of justice. If the author writes the order mechanically then there will be no application of mind. Suppose

the superior court makes an order committing a mistake of law, it rules the field till it is rectified by a subsequent decision. Such order is not only binding on the parties but also on the lower courts. An error in the order would cause injustice to the cause of justice. One can write a laudable order by presence of mind but not by putting it at rest.

Another crucial aspect in writing the order is when the opposite party is made *ex-parte*. Usually there will be more clarity in the contested matter than in the uncontested matter. In a contested matter both the parties would supply relevant material. But it is not so in an uncontested matter. If the opposite party fails to attend the Forum to explain its version it can not always be presumed that the opposite party willfully abstained from the proceedings. There may be genuine reasons for its absence. Sometimes the courts may draw an adverse inference on the absence of the opposite party. There are also some decisions holding that the allegations in the complaint are unrebutted it is deemed that the allegations are proved. If the matter is not contested it will be difficult to ascertain the truth unless negligence or deficiency is seen on the face of it. The author may have to necessarily step in to the shoes of the absentee and consider the allegations made against him from his angle.

Sometimes the author might choose to make certain adverse comments or caustic remarks due to the callous acts of a person in not discharging the responsibilities towards consumer. In order to restrain irresponsible attitudes of a businessman or a government employee, the author while writing the order may pass some adverse remarks on such person. Under such circumstances what is required is that such critical comments should not amount to passing strictures on such person. The decision of a State Commission suggests that strictures cannot be passed against any person without hearing

him. Thus passing strictures on any person without providing him an opportunity to explain his version is not proper.

Preliminary issues like jurisdiction, limitation, etc., may come up for consideration. It is necessary that such issues should be considered in the beginning of the order itself than at a later stage. For instance, if the author chooses to write in the beginning, the deficiency in service and relief to be granted, and finally comes to a conclusion that the Forum has no jurisdiction to entertain the complaint or the complaint is barred by limitation, then the discussions made in the beginning of the order does not convey any sense. When the Forum has no jurisdiction what purpose does it serve if the opposite party is held to be deficient in services or the complainant is entitled to receive compensation? It amounts to illegal exercise of jurisdiction. Hence, the member should carefully decide which point should precede the other for making discussion in the order.

The operative portion of the order (result), which usually finds its place even on the docket, should be pragmatic in the sense that the directions of the Forum must be practically possible to comply with. Court should not ask parties to do which is not possible. The enforcement of order is based on the operative portion of the order. Hence, the author should bear in mind that the directions given to the parties must be clear, unambiguous and executable. Ambiguity in the operative portion of the judgement not only causes inconvenience to the parties but also creates a dead lock in resolving the dispute. For example if an order is made against an opposite party to remove the deficiency in service which has already been provided, it will not be in a position to carry out the order as the service has already been rendered and there is no chance to repeat the same exercise for removal of deficiency. All the care taken by the author in preparing the order becomes futile

if the operative portion of the order is not clear. The operative portion of the order must denote time for compliance of the order.

Finally, the beauty of the order lies in its conclusion. Conclusion does not mean a concluding paragraph or the operative portion of the order. The essence of any order is the relief granted. Particularly in consumer disputes the satisfaction or dissatisfaction of consumer will be based on the kind of relief granted. Under a beneficial legislation like Consumer Protection Act the member should carefully consider the kind of benefit or relief that can be passed on to the consumer as per the provisions of law. The provisions in the Act should be construed in favour of Consumer. This is where the member should strike a balance between the legal provisions and consumer aspirations to bring the matter to a logical conclusion.

The quality of a member is judged by the order made by him, and as such he should endeavour to achieve excellence in writing the order. It is possible only when the member develops skills in creative writing. Writing the order mechanically whither the creative skills. Some of the judgements delivered by Supreme Court, National Commission and various High Courts are masterpieces, which provide deep insight in to several legal issues and also guide how to carry out discussions on the issues and how to write the order attractively and communicatively. Judgements written by eminent judges of Supreme Court, National Commission and High Courts would inspire the member to work for elegance in writing order. The member should also keep abreast with the latest decisions of these courts. Similarly, the member should keep himself acquainted with the recent changes in the legal position.

ENFORCEMENT

Order of any court becomes ineffective without a provision to enforce such order through legal proceedings. Thus, every court shall have inherent powers to enforce its order even without a specific provision. Similarly Consumer Protection Act contains a provision for enforcement under section 25. As the Consumer Disputes Redressal Agencies constituted under the Act are tribunals, the provision for enforcement is so carefully worded to remove any difficulty or inability of such tribunals in enforcing the order. Section 25 as enshrined in the principal Act reads as follows:

Section 25: Enforcement of orders by the District Forum, the State Commission or the National Commission: Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose jurisdiction-

(a) in the case of an order against a company, the registered office of a company is situated , or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for a gain, is situated, and there upon the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

The term 'decree' is defined under section 2(2) of the Code of Civil Procedure as under:

The term 'order' has been defined under Section 2 (14) of the Code of Civil Procedure as " the formal expression of any decision of a Civil Court which is not a decree".

Note: In Civil Courts unlike in Consumer Forums Order and Decree are two separate entities. The Civil Court pronounces order and also issues a decree, which is executable. But in the case of Consumer Forums only the order serves as a decree.

It is a well-accepted fact that execution of the decrees or orders of a Civil Court is tortuous and tardy. An eminent Chief Justice observed; "in India the travails of the litigant only begin after he has successfully obtained a decree in his favour in a Civil Court."

Particularly, when Consumer Protection Act is designed to deliver speedy justice, consumers who approach Consumer Disputes Redressal Agencies expect not only quick disposal of their disputes but also quick enforcement of the orders given by Consumer Forums. Section 13(3)(a) stipulates that every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party. But there is no such time-frame fixed under section 25. In fact, section 25 after 2002 amendments subjected to a radical change and Consumer Forums can issue a

certificate to District Collector for enforcement but on their own they do not enforce final orders as was done prior to these amendments. Under the present provisions there is little scope for the Consumer Forums to enforce the order expeditiously. But, an interim order shall be enforced by the Consumer Forums in the given time frame.

The most important requisite in enforcement of order is to get the property details of the Judgment Debtor for attachment. This is where the consumers take lot of time to get such details for enforcement of orders. At times the Decree Holder may not get these details at all. In certain cases, the details mentioned may not be correct. Under such circumstances, the Decree Holder prefers to file a petition under section 27 to impose punishment to the Judgment Debtor for non-compliance as a coercive measure than under section 25 for enforcement of decree. If consumers get required assistance from authorities to get the property details of the Judgment Debtor enforcement becomes easier. But, unfortunately Consumer Forums are bitterly criticized for the delay in enforcement. Even if Consumer Forums summon the Judgment Debtor by a warrant, the warrants are not executed promptly for several reasons. Under these circumstances, the Consumer Forums are helpless in quick enforcement of orders.

Section 25 deals with the execution of order by the Forum, in case of non-compliance of the order by judgement debtor. It has undergone a thorough change in 2002 amendments. After 2002 amendments, Section 25 attained a different wording as follows:

“25 (1) Where an interim order made under this Act, is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not

complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, a State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, State Commission or the National Commission, as the case may be, and such District Forum, or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the District (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue”.

According to the amended section the power of the Redressal Forums to enforce their orders under civil process is taken away. These Redressal Forums, on an application by the decree-holder, can issue a certificate for the decretal amount to the District Collector for recovery. This provision gives rise to another question, which requires clarification is whether the District Forum, State Commission or National Commission becomes *functus officio*, and has no power to execute its order in view of the limited provisions of section 25. Consumer Forums can only issue a certificate for the amount to the collector of the District. This point has come up for discussion in *Allahabad Development Authority vs. District*

Consumer Protection Forum & Another in which the Allahabad High Court held as under (I (2006) CPJ 295)

“ From a reading of section 25 of the Act it is absolutely clear that the application for getting the order executed, whether it is an interim order or a final order, either by District Forum, State Commission or the National Commission, the application has to be made before that authority and after a certificate is drawn by the said authority and sent to the Collector of the District, recovery has to be made by the Collector as arrear of land revenue. Therefore, the power of an executing court does lie with the District Forum, State Commission or National Commission as the case may be, under the Act. The plea that the District Forum has become *functus officio* after passing order is not correct and cannot be accepted.”

Further in view of the insertion of section 3B to section 13 to enable the Redressal Forums to pass interim order during the pendency of any proceeding, execution of such interim order has become necessary. Accordingly section 25 is amended to include the provisions for enforcement of interim order. Sub-sections (1) and (2) of section 25 deal with these provisions. In case of non-compliance of interim order the Redressal Forums are empowered to attach the properties of the person who failed to comply with the interim order and even sell such attached properties if the non-compliance continues beyond three months.

As per the provisions of the amended section a civil court cannot enforce an order passed by the Redressal Forum after 15.3.2003, on which date the amended provisions came into force.

‘Judgment-debtor’ means any person against whom a

decree has been passed or an order capable of execution has been made (Section 2(10) of C.P.C.)

‘Decree-holder’ means any person in whose favour a decree has been passed or an order capable of execution has been made (Sec 2(3) of C.P.C.).

Civil Rules of practice or Criminal Rules of Practice are the rules framed by the High Court to be followed by the subordinate court in its jurisdiction.

Procedure for Execution of the decree/order is given under section 36 to 74 of the Code of Civil Procedure, 1908. Order XXI of CPC provides the mode for execution and the provisions need to be taken into consideration by the Consumer Forums for better management.

Order 21 Rule 10:

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then, to such Court or to the proper Officer thereof.

Rule 11 (2) Written application: Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:

- (a) The number of the suit,
- (b) The names of the parties;
- (c) The date of the decree;
- (d) Whether any appeal has been preferred from the decree;

- (e) Whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) Whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) The amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross- decree, whether passed before or after the date of the decree sought to be executed;
- (h) The amount of the costs (if any) awarded;
- (i) The name of the person against whom execution of the decree is sought; and
- (j) The mode in which the assistance of the court is required ...‘.

(3) The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Order 21 Rule 13: Application for attachment of immovable property to contain certain particulars: Where an application is made for the attachment of any immovable property belonging to a judgement-debtor, it shall contain at the foot-

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by the boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and
- (b) a specification of the judgment-debtor’s share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Rule 14: Power to require certified extract from Collector's register in certain cases: Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land of its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Rule 15: (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order, as it deems necessary for protecting the interests, of the persons who have not joined in the application.

Rule 17: Procedure on receiving application for execution of decree: (1) On receiving an application for the execution of a decree as provided by Rule 11, sub-rule (2), the court shall ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the court shall allow the defect to be remedied then and there or within a time to be fixed by it.

(1A) If the defect is not so remedied, the court shall reject the application.

Rule 21: Simultaneous execution: The Court may, in its discretion, refuse execution at the same time against the

person and property of the judgment-debtor.

Rule 22: Notice to show cause against execution in certain cases: (1) Where an application for execution is made—

- (a) more than two years after the date of the decree, or
- (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44-A (or)
- (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Rule 47: Attachment of share in movables: Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and

another as co-owners, the attachment shall be made by a notice to the judgement-debtor prohibiting him from transferring the share or interest or charging it in any way.

Rule 49: Attachment of partnership property: (1)

Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The court may, on the application of the holder of a decree against the partner, make an order charging the interest of such partner in the partnership property, and profits with payment of the amount due under the decree, and may, by the payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgement-debtor, and on his partners or such of them as are within India.

(5) Every application made by any partner of the judgement-debtor under sub-rule (3) shall be served on the decree-holder and on the judgement-debtor, and on such of the other partner as do not join in the application and as are within India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners and all orders made on such application shall be similarly served.

Rule 50: Execution of decree against firm: (1) where a decree has been passed against a firm, execution may be granted-

- (a) Against any property of the partnership
- (b) Against any person who has appeared in his own name under rule 6 of rule 7 of the Order XXX or who has been admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) Against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 30 of the Indian Partnership Act, 1932.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c) as being a partner in the firm he may apply to the court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2) the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served

with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX

Rule 51: Attachment of negotiable instruments:

Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Rule 52: Attachment of property in custody of Court or Public Officer: Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree holder and any other person, not being the judgement debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Rule 54: Attachment of immovable property: (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgement-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1A) The order shall also require the judgement-debtor to attend Court on a specified date to take notice of the date to be fixed for setting the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary

mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situated and, where the property is land situated in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

Order 21 Rule 46: Attachment of debt, share and other property not in possession of judgement-debtor (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other movable property not in the possession of judgement-debtor, except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting —
 - (i) in the case of debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of court;
 - (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
 - (iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the J.Dr.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house and another copy shall be sent in the case of debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into court, and such payment

shall discharge him as effectually as payment to the party entitled to receive the same.

46A. Notice to garnishee: The court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under Rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into court the debt due from him to the J.Dr. or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he could not do so.

(2) An application under sub-rule (1) shall be made on affidavit verifying the facts alleged and stating that, in the belief of the deponent, the garnishee is indebted to the J.Dr.

(3) Where the garnishee pays in the court the amount due from him to the J.Dr. or so much thereof as is sufficient to satisfy the decree and the costs of the execution the court may direct that the amount may be paid to the decree holder towards satisfaction of the decree and costs of the execution.

46B. Order against garnishee: Where the garnishee does not forthwith pay into court the amount due from him to the J.Dr. or so much thereof as is sufficient to satisfy the decree and the cost of execution, and does not appear and show cause in answer to the notice, the court may order the garnishee to comply with the terms of such notice and on such order, execution may issue as though such order were a decree against him.

46C. Trial of disputed questions: Where the garnishee disputes liability, the court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debit in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the court, the court shall send the execution case to the court of District judge or any other competent court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that court.

46D. Procedure where debt belongs to third person: Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in such debt, the court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

46E. Order as regards third person: After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the court may make such order as is here in before provided, or such other order or orders upon such terms, if any with respect to the lien, charge or interest as the case may be, of such third or other person or persons as it may deem fit and proper.

46F. Payment by garnishee to be valid discharge: Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgement-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46G. Costs: The costs of any application made under rule 46A and of any proceedings arising there from or incidental thereto shall be in the discretion of the court.

46H. Appeals: An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

Attachment

The Member should know whether attachment can be given to all properties or whether some properties are exempted from such attachment. Section 60 of CPC throws light on this subject.

Section 60 of CPC: Property liable to attachment and sale in execution of decree: (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgement-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgement-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgement-debtor his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such,

and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;
- (d) Books of account;
- (e) A mere right to sue for damages;
- (f) Any right of personal service;
- (g) All moneys payable under a policy of insurance on the life of the Judgement-debtor;
- (h) The interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;
- (i) An expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (j) A right to future maintenance;
- (k) Where a judgement-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Rule 55: Removal of attachment after satisfaction of decree: Where –

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court, or
- (b) satisfaction of the decree is otherwise made through the court or certified to the court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgement-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Rule 56: Order for payment of coin or currency notes to party entitled under decree: Where the property attached is current coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Rule 57: Determination of attachment: (1) Where any property has been attached in execution of a decree and the court, for any reason, passes an order dismissing the application for the execution of the decree, the court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease.

(2) If the court omits to give such direction, the attachment shall be deemed to have ceased.

Rule 58: Adjudication of claims to, or objections to attachment of property: (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

- (a) Where, before the claim is preferred or objection is made, the property attached has already been sold; or
- (b) Where the court considers that the claims or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the court shall, in accordance with such determination—

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
- (d) pass such order as in the circumstances of the case it deems fit

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order

so refusing to entertain the claim or objection shall be conclusive.

Recovery Certificate to be issued to the District Collector

Execution of orders: Under Section 25 of the Act procedure is laid down for enforcement of orders by District Forum, the State Commission or the National Commission. The former portion of the section deals with the powers of the Redressal Forum in enforcement of interim orders. Forum can order attachment of property of the person not complying with the interim order. But such attachment shall not remain in force for more than three months. This provision suggests that the Forum, which passes interim order, should give three months time to the opposite party for compliance of such order. If non-compliance continues even after 3 months the attached property may be sold and out of the sale proceeds the complainant may be awarded suitable damages.

Subsection 3 of Section 25 prescribes totally a different enforcement procedure in case of a final order. On an application by the person entitled to the amount in terms of the order passed by the Forum, the Forum may issue a certificate for the said amount to the collector of the district to be recovered in the same manner as arrears of land revenue. It leaves an ambiguity on whether the Forum can attach the property of the judgement debtor in the enforcement of final order as is done in the case of interim order. There is no provision either to proceed against the property of the judgement debtor or a garnishee.

Order 21 Rule 12: Application for attachment of movable property not in judgement-debtor's possession: Where an application is made for the attachment of any movable property belonging to a judgement-debtor but not in his

possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Useful References

The Forum before issuing a certificate to the District Collector on an application moved by the Decree holder, must issue notice of the execution case to the judgement debtor. Otherwise it becomes denial of opportunity to the judgment debtor as held in *Punjab Urban Development Authority & Anr vs. Sarvjit Kumar Bawa, II* (2005) CPJ 212 by Chandigarh UT Commission.

In *S.K.Bhargava vs. Mahadeva, IV* (2004) CPJ 174, the Rajasthan State Commission discussed elaborately on newly substituted section 25 as under:

‘It may be appreciated that sub-section (1) and (2) of section 25 above, talk of the mode and manner for executing “interim order made under the Act’. Compliance of the interim orders may now be enforced by ordering the property of the person, not complying with such order, to be attached and, in the event of continuance of the disobedience of the interim order for more than three months, to sell the property attached and award such damages to the complainant out of the sale proceeds, as thought fit by the Redressal Agency concerned, and pay the balance to the person entitled to such balance.

Proceedings under the Act being of summary nature, necessity was felt for arming the Redressal Agency with the power of passing such interim order, which may give interim relief to the consumer-complainant during the pendency of the complaint before such agency and in the event of non-compliance, may be enforceable through attachment and sale of the property of the party against which such interim order was made.

But what about the enforceability of final order passed by the Redressal Agency in the complaint? Sub-section (3) of section 25 speaks of the mode of enforceability of only such final order, which relates to the payment of the amount due from any person under such order. In this behalf what the Agency is required to do is to receive such amount to the effect that the amount payable under the order has not been paid and issue a certificate to that effect to the collector concerned who shall then proceed to recover the amount in the same manner in which arrears of land revenue are to be realized under the Public Due Recovery System.

But what procedure should be adopted for enforcement of the orders, which are neither of the nature of 'interim orders', enforceable under sub-sections (1) and (2) of section 25 nor of the nature of 'final orders' enforceable under section 25(3) of the Act? In other words, how a final order, which is made under section 14 of the Act and which directs a party to the complaint to do or abstain from doing an act but in the event of non-compliance of such order casts no pecuniary liability upon the person not complying with such order, would be enforceable? The newly amended section 27 gives the answer to this pertinent question.

In *Punjab Urban Development Authority vs. Sarvjit Kumar Bawa II* (2005) CPJ 212, the Union Territory Consumer Disputes Redressal Commission, Chandigarh held as follows:

“ The District Forum, in our considered view, has totally failed to appreciate the provisions of section 25(3) of the C.P. Act which mandates that it is on the application moved by the decree-holder – Execution applicant, that the District Forum shall issue a certificate under section 25(3) of the C.P. Act to the District Collector. The District Forum further without issuing notice of the

execution cases to the judgement-debtor proceeded to issue certificate under section 25(3) of the C.P. Act which cannot be held to be justified in the eyes of the law. ... The District Forum on the first go issued a certificate under section 25(3) of the C.P. Act upon oral request of the learned counsel for the execution application without being there any written application. In our opinion, both in the absence of any specific application under section 25(3) of the C.P. Act on record and denying opportunity to the judgement-debtor of being heard by the District Forum has erred in law.

In Ghaziabad Development Authority *vs.* Smt. Mohini Singh, 1999 (2) CPR 339 the U.P. State Commission held that no appeal against an order passed in execution case maintainable. On the oral request of the learned counsel for the appellant the State Commission permitted appeal to be converted into revision.

Section 25 & 27 are two Independent Remedies

In Deepthi Coaching Centre *vs.* Itta Krishnaiah I (1999) CPJ 208 the A.P.State Commission held as follows:

It is well established that proceedings under section 25 of the Act are of civil nature and that they are independent and different from proceedings initiated under section 27 of the Act, which are of criminal or quasi-criminal nature. If action is sought to be taken under section 27 of the Act, separate proceedings will have to be taken under that section and notice has to be issued to the person against whom action is sought to be taken under section 27 and after reasonable opportunity to him only, appropriate orders imposing punishment under that section can be made.

In Hira Constructions Co. *vs.* Pranavam Co.op Housing Society Ltd & Ors I (2003) CPJ 155 (NC), the National

Commission held that if there is any compromise between the Members and society after the order was passed the same should be brought to the notice of the District Forum if any execution petition is filed by the complainants.

In *Phoolchand Arya vs. Rajasthan Housing Board & Ors* I (2004) CPJ 347 the Rajasthan State Commission held that the executing court cannot go behind the decree as was made by it on the original side. The Forum in exercise of its powers under section 25/27 of the Act can not go behind the basic order dated 27.6.1992. An order disposing of an application under section 27 of the Act without enforcement of basic order does not deprive the complainant of getting the basic order enforced. The ultimate purpose of the proceedings under sections 25 and 27 of the Act is redressal of the grievance of the complaint through the coercive methods mentioned in these sections.

PENAL PROVISIONS

It is the prime most duty of the members to understand the purpose and the legislative intent in providing section 27 under Consumer Protection Act. If an order is passed by the Consumer Forum against a person and that person (Judgement-Debtor) deliberately fails or omits to comply with the order, it is necessary to impose penalty for such disobedience of the order. By this section Consumer Forums are empowered to take coercive steps against Judgement-Debtor for compliance of the order. But there is a lot of controversy and difference of opinion amongst legal professionals on the validity of section 27. Some are of the opinion that section 27 is not legally sustainable, whereas others hold the view that Section 27 is necessary for quick enforcement of orders. In *Haryana State Electricity Board & Ors vs. Pirthi Singh 1993 III CPR 351* the Haryana State Commission observed that section 27 was the king pin of consumer jurisdiction without which perhaps the consumer jurisdiction would only be a paper tiger lacking teeth altogether. It is further observed that this section is one of the rare provisions in the civil jurisdiction where the penal sanction of imprisonment and fine is provided for non-compliance with the orders of Consumer Forums. The main contention of those who argue against Section 27 is that Consumer Forum has no

powers to conduct trials under Criminal Procedure Code. To overcome this difficulty the Act was amended in 2002 to empower the Consumer Forum with the powers of I class Judicial Magistrate to order imprisonment of a person not complying with the order of the Forum. In the opinion of a few other critics the judgement-debtor or the person against whom the Consumer Forum gives order may not get all available opportunities to defend himself, as the trials are summary in nature.

Another criticism was that the principal Act did not contain a provision to punish the complainant for not complying with the order of the Forum, and hence discriminatory. But this lacuna was removed by 1993 amendments. Even a complainant who fails or omits to comply with the order of the Forum is punishable as per the 1993 amendments. At this juncture it is necessary to look into the provisions of section 27 before and after 2002 amendments.

Section 27 before 2002 amendments: Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section.

Section 27 after 2002 amendments: (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) Offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

Thus section 27 has been subjected to thorough change and the Consumer Forums are conferred with the First Class Judicial Magistrate powers by 2002 amendments. Further proviso to section 27 is repealed. Thus after 2002 amendments there is no discretion to the Consumer Forums to impose a lesser sentence of imprisonment or fine than specified under section 27. It is mandatory for imposition of the minimum sentence of imprisonment or fine under this section. For this purpose the Redressal Forums are given powers of a judicial magistrate of the First Class for the trial of offences under

this Act. For the purpose of Criminal Procedure Code, 1973 the Forum shall be deemed to be a judicial Magistrate of the first class. Sub-section 3 of section 27 states that the District Forum, State Commission or the National Commission may try offences under this Act summarily, as the case may be. Penalty petitions under section 27 are also to be tried summarily.

According to the provision of section 27 a minimum penalty of one month imprisonment or a fine not less than Rs.2, 000 should be imposed. Similarly, a maximum imprisonment of 3 years or a maximum fine of Rs.10, 000 is prescribed. Consumer Forums are expected to exercise the authority judiciously to meet the ends of justice. The legislative intent in creating section 27 is to make the parties comply with the order in the specified time and failure to do so render him liable to be punished with either imprisonment or fine or both.

There are no guidelines provided in the Act as to when a decree-holder can invoke section 25 and when shall he proceed under section 27. It is not very clear whether Decree Holder should invoke section 27 only after exhausting the remedy provided under section 25. Delhi State Commission in *Omprakash Batia vs. Deepu Chits Pvt Ltd & Ors* held that 'an application under section 27 is maintainable by the decree-holder against a judgement-debtor, in-spite of the fact that a remedy by way of execution is available to him under section 25 of the Act'.

In *Nirmala Syam Sundar Jaipuria vs. Canbank Mutual Fund* 2004 CTJ 1092 Maharashtra State Commission held a different view according to which the exceptional remedy available under section 27 of the Consumer Protection Act should not be permitted to be resorted as a handle of vengeance. It is only when normal attempts of recovery of the awarded compensation fail, then the same should be resorted to.

It is well known that the judgement-debtor creates legal hurdles in the way of decree-holder at the time of execution and thus deprives him from the fruits of the decree for a long time. In many cases, the judgement-debtors are in a position to pay the decretal amount but still they delay the executions by filing frivolous objections. It is axiomatic that in India the real trouble of a litigant starts after he obtains a decree. The Legislature while enacting the Consumer Protection Act was mindful of delays that are caused by judgement-debtors at the time of execution. So Parliament in its wisdom enacted section 27 so that a decree-holder if he so wishes can prosecute the judgement-debtor in case he fails to pay the decretal amount. The decree-holder can avail any of them at his will.

Whether remedy under section 25 and section 27 can be sought in a single petition is considered by A.P. State Commission in I (1999) CPJ 208 and held that separate petitions are to be filed because the remedy under section 25 is civil in nature whereas section 27 involves criminal procedure.

While making a final order in a particular case, whether the Redressal Forum is empowered to invoke section 27 in anticipation of disobedience by the judgement-debtor. The National Commission in *Union of India vs. Chairman, Madras Provincial Consumer Association* (1992) II CPR 710 held that the question of punishment or sentence under section 27 could arise only when there had been a disobedience of an order already passed by the Forum. It was not open to the Redressal Forum constituted under the Act to anticipate that such a disobedience would take place and pass in advance an order of punishment and imposition of a sentence of imprisonment on the opposite party even while disposing of the main complaint.

Rajasthan State Commission categorically stated in its order in *Rajasthan State Electricity Board & Ors vs. Parag Ice Factory* (1994) II CPJ 64, that if an action is to be taken under

section 27, natural justice requires that the person sought to be proceeded against should be issued a notice and his explanation should be heard before any conclusion is reached that an order of punishment and imposition of any sentence is called for.

In *Union of India vs. Thiruvengadam*, the National Commission found error in the order of the District Forum in which the Southern Railway was directed to pay compensation to the complainant and in case the compensation was not paid within the period fixed in the order, the opposite parties would undergo simple imprisonment for one year under section 27 of the Act. The National Commission further observed that such composite order should not be passed. If an order passed under section 14 of the Act is not complied with by the opposite party, he should be heard before passing an order under section 27 of the Act. The party concerned is entitled to give reasonable explanation about the default.

Prior to 2002 amendments there was no provision for appeal against the order passed under section 27. In 2002 amendments section 27A was inserted enabling the aggrieved party to prefer an appeal against the order passed under section 27 by the District Forum to State Commission or against the order of the State Commission to National Commission or against the order of the National Commission to the Supreme Court. Sub-section (2) of section 27 prohibits making an appeal against the order passed under section 27 to any other court except to the Consumer Disputes Redressal Commissions. In any case final appeal lies with the Supreme Court. The appeal should be preferred within thirty days and the appellate court has discretion to condone any delay in filing appeal on a sufficient cause. Section 27A is usefully extracted hereunder;

27A. Appeal against order passed under section 27: (1) Notwithstanding anything contained in the Code of

Criminal Procedure, 1973, an appeal under section 27, both on facts and on law shall lie from-

- (a) the order made by the District Forum to the State Commission
- (b) the order made by the State Commission to the National Commission and
- (c) the order made by the National Commission to the Supreme Court

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this Section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of 30 days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days.

Members while dispensing the petitions under section 27 should get themselves acquainted with the Criminal Procedure Code and Indian Penal Code. It is very important to observe the following basic procedures particularly in exercising the authority in Penalty Petitions.

1. Show-cause notice should be issued to the person who is alleged to have disobeyed the order of the Consumer Forum (1993 1 CPR 203).
2. Section 25 is a civil remedy whereas section 27 is a criminal proceeding. Hence, both remedies cannot be sought by a single application. (I (1999) CPJ 208).
3. A person who is not a party in the main petition

(substantive proceeding) cannot be subjected to penalty under section 27. (1994 (2) CPR 165).

4. Forum may adopt any procedure for trial under section 27 provided it is fair and just for the opposite party.
5. Accused cannot be convicted in his absence.
6. Basic order cannot be amended, modified or varied in the proceedings under section 27. (1996 (2) CPR 118).
7. If the order is complied with during the pendency of petition under section 27 there is no ground to sustain the order of imprisonment (1994 (2) CPJ 121). But only fine should be imposed. (1993) 1CPR 518).
8. If the petitioner filed penalty petition against only one opposite party where, in fact, the relief was granted in the original petition against three opposite parties the Forum can impose punishment only on one O.P. (as preferred by the petitioner) against whom the penalty petition is filed.
9. In case of a non-bailable warrant being issued against J.Dr. it is necessary to recall the NBW before the P.P. is terminated for any reason.

Under section 27 the Consumer Forum is empowered to order imprisonment of a person or impose fine or both. This particular section is silent on the course of action to be taken in default of payment of fine by the offender (J.Dr.). Section 30 Cr.P.C. empowers the magistrate to award imprisonment in default of payment of fine subject to certain restrictions. But section 27 does not provide for imposing sentence in default of payment of fine.

Recovery of fine imposed

Where an offender has been sentenced to pay a fine by a court, it may take action for the recovery of the fine in the manner specified in section 421 Cr.P.C., i.e., by attachment

and sale of his movable property, or issue a warrant to the District Collector authorizing him to realize the amount as arrears of land revenue from his movable or immovable property or both.

As accused cannot be convicted in absentia, it is the duty of the Redressal Forum to secure the presence of the O.P. before an action could be taken against him. If his presence could not be secured by summons it is necessary for the Forum to issue bailable warrant. If bailable warrant fails to bring the opposite party before the Forum, non-bailable warrant may be issued against him. In some cases the opposite party may be undergoing imprisonment in some other case and in such a contingency a production warrant should be issued to the police to bring the J.Dr. from the Jail and produce him before the Forum.

Members must be familiar with the relevant provisions of Criminal Procedure Code, 1973; otherwise it becomes difficult for them to act under the quasi-criminal jurisdiction of the Forum under section 27. The members must necessarily know the law of warrant, the form of warrant, whom to forward the warrant, procedure on arrest of a person, etc. The following provisions extracted from Criminal Procedure Code and Indian Penal Code are useful to the members while conducting trials under section 27.

Provisions relating to Warrant under Criminal Procedure Code

Section 70: Form of warrant of Arrest and duration: (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the Presiding Officer of such court and shall bear the seal of the court.

(2) Every such warrant shall remain in force until it is cancelled by the Court, which issued it, or until it is executed.

Warrant of arrest: Warrant is an order addressed to a person concerned directing him to arrest the accused and to produce him before the court:

1. It must be borne in mind that a warrant must order the production of the person arrested before the court. It cannot order to deliver the person arrested to another.
2. When a detention order is in writing and has been signed by the detaining authority it is a warrant.

Law of Warrant: The law of warrant may be divided into three parts.

1. Form of warrant
2. Execution of warrant by persons within the local jurisdiction of the court issuing it; and
3. Warrant to be executed outside the local jurisdiction of the court.

Form of Warrant: A warrant shall be in writing, shall be signed by the Presiding Officer, shall bear the seal of the court, it shall mention the name and designation of the person or persons who are to arrest, the offence with which the accused is charged.

Presiding Officer: Presiding Officer is not necessarily the officer who has taken cognizance. He must be the officer presiding at the time of signing of the warrant.

When no name of the accused is given in the warrant but it is only mentioned as a proprietor of a firm, the warrant is illegal. The description of the person should be enough to prove identity of the person to be arrested.

Warrant cancelled: The word “cancelled” means cancelled specifically by the court issuing the warrant. A warrant returnable by a certain date cannot be said to be cancelled after that date, and it can be executed even after that date if not cancelled by the court.

Section 71: Power to direct security to be taken:

(1) Any court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state:

- (a) The number of sureties
- (b) The amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound,
- (c) The time at which he is to attend before the court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the court.

Section 72: Warrants to whom directed: (1) A warrant of arrest shall ordinarily be directed to one or more police officers, but the court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or person than one, it may be executed by all, or by any one or more of them.

Section 78: Warrant forwarded for execution outside jurisdiction: (1) When a warrant is to be executed outside the local jurisdiction of the court issuing it, such court may, instead of directing the warrant to a Police Officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed, and the Executive Magistrate

or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner herein before provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such document, if any, as may be sufficient to enable the court acting under section 81 to decide whether bail should or should not be granted to the person.

Section 79: Warrant directed to Police Officer for execution outside jurisdiction : (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the court issuing the same, he shall ordinarily take if for endorsement either to an Executive Magistrate or to a Police Officer not below the rank of an Officer-in-charge of a Police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or Police Officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police officer within whose local jurisdiction the warrant is to be executed, will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the court which issued it.

Section 80: Procedure on arrest of person against whom warrant issued: When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the court which issued the warrant is within thirty

kilometers of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

Section 81: Procedure by Magistrate before whom such person arrested is brought: (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the court which issued that warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

Sections 193 and 228 of Indian Penal Code

Section 193: Punishment for false evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose

of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 228. Intentional insult or interruption to public servant sitting in judicial proceeding: Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

USEFUL REFERENCES

In *Manoj Kumar Surendraji Dhussa vs. Yusufkhan Gulabkhan Pathan & Anr* II (2002) CPJ 104 Maharashtra State Commission held as under:

“The District Forum issued process under Section 27 of Consumer Protection Act, 1986 against both O.Ps. As far as O.P.1 is concerned the District Forum ordered fine of Rs.5,000 and on failure to pay fine sentence of 15 days. As far as O.P. 2 is concerned who is applicant herein the District Forum has adopted different standard in awarding the sentence. In that he was imposed fine of Rs.2,000 and sentence of one month. The District Forum can not discriminate and pass two kinds of different sentences.”

In *Belaria Financiers (Regd) & Anr vs. Babu Singh & Anr* III (2001) CPJ 485 the Union Territory Consumer Disputes

Redressal Commission, Chandigarh held as under:

“In order to secure the attendance of such trader, person or the complainant, a notice of showing cause is to be issued by the District Forum and once such trader, person or the complainant has put in appearance whether in person or through counsel, coercive process need not be issued. In other words, when the purpose of issuing a show-cause notice is achieved by the presence of the parties through the counsel, the issuance of further process by issuing warrant of arrest to secure the presence is rendered unnecessary.”

CIVIL CONTEMPT

It was argued before the Allahabad High Court that section 27 of the Consumer Protection Act, 1986 was unconstitutional, as it did not provide for any procedure for the trial. The Karnataka High Court order was relied upon in which it was held that the proviso to section 27 of the Consumer Protection Act is violative of Articles 20 and 21 of the Constitution. It was held by the Karnataka High Court therein that while the main part of section 27 of the Act is not unconstitutional the proviso thereto is unconstitutional. Hence, it was held that the offence created by section 27 can only be tried by filing criminal complaint before the criminal court and cannot be tried by the District Forum, State Commission or National Commission as the case may be. But Allahabad High Court disagreed with the view of Karnataka High Court. *Ghaziabad Development Authority vs. Union of India* (III (2004) CPJ 366 (DB) and held as under:

- “16. It is well settled that there are two types of contempt, namely, civil contempt and criminal contempt.
17. The meaning of civil contempt and criminal contempt

has been explained in the Contempt of Courts Act, 1971. Section 2 of the said Act states:

- (a) contempt of Court means civil contempt or criminal contempt
 - (b) 'civil contempt' means willful disobedience to any judgement, decree, direction, order, writ or other process of a court, or willful breach of an undertaking given to a court.
 - (c) 'criminal contempt' means the publication (whether by words spoken or written, or by signs or by visible representations, or otherwise) of any matter or the doing of any other Act whatsoever which —
 - (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or
 - (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
 - (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner
18. Thus, criminal contempt means scandalizing the court or lowering its authority or interfering with the court of jurisdiction on the other hand, civil contempt means disobedience of any order of the court and the purpose of civil contempt is to compel obedience of the order of the Court. The principal object of civil contempt proceedings is hence to secure enforcement of the order of the Court.
19. A perusal of section 27 clearly shows that proceedings therein are in the nature of proceedings of civil contempt, and their object is to compel obedience of the orders of the District Forum, State Commission or the National Commission."

In *State of Karnataka vs. Viswabharathi House Building Co-operative Society*, 2003 CTJ 85 the Supreme Court held as under section 27 of the Act confers an additional power upon the Forum and commission to execute its order. The said provision is akin to order 29 rule 2A of CPC or the provisions of the Contempt of Court Act or section 51 read with Order 21 rule 37 CPC. A parliamentary statute can create a tribunal and might say that non-compliance of its order would be punishable by way of imprisonment or fine which can be in addition to any other mode of recovery". Thus the validity of section 27 was upheld.

Delhi Automobiles vs. Peekay Synthetics 1993 (3) CPR 64 Punjab State Commission. "Simple order of dismissal of the objections and then to issue warrants of conviction and sending the same to the police for compliance will not meet the ends of justice. Since show cause notice had been issued an objection had been dismissed, straight away order of conviction and sentence should have been passed and warrants in that respect should have been issued to the police for arresting the convict to be lodged in the jail to suffer the sentence of imprisonment being passed or to recover the fine as the case may be. Again and again seeking presence of the person against whom the order is to be passed is not contemplated. Thus, while setting aside the impugned order, the case is sent to the District Forum for passing the order of conviction and sentence according to law".

Arrest of women for recovery of amount: The provisions of arrest in the CPC have to be taken into consideration by the Forum while it deals with recovery of money. If that be so, section 56 & 58 of C.P.C. become relevant. Under section 56 of C.P.C. notwithstanding anything in this part, the court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment

of money. Thus, when the Forum is executing an order for recovery of the amount, regarding recovery of money from others, arrest can be ordered only if it is found that the persons concerned have means to pay and they are neglecting to pay the amount. (Jancy Joseph Vs. Union of India I (1999) CPJ 464 Kerala High Court)

In Assistant Commissioner of Police *vs.* Consumer Disputes Redressal Forum, Mumbai reported in 2003(1) CPR 254, the Mumbai State Commission held in the said order as follows:

“12. We wish to reiterate that as serious consequences flow from the order being passed under section 27, affecting the fundamental rights, freedom and liberty of the citizen enshrined in the constitution, the Forums have to circumspect and have to be judicious while processing the application seeking execution under section 27 of the Act. It would not be proper for a Forum to make a display of its temper or irritation over lapses on the part of the opposite parties so as to exhibit an attitude, which may be inferred as hostile to the opposite party. It may be realized that howsoever correct a judgement may be on law and facts, it will fail to serve the ends of justice if an impression is created in the minds of the people that it has been influenced by anger and passion. It should be borne in mind by the Presiding Officers that in judicial process, means are as important as the ends”.

The Maharashtra State Commission in Swadeshi Marketing and Retail Trading Pvt Ltd and Another Vs. Namdeo Baba Saheb Jadav II (2004) CPJ 614 held the same view.

In Kanwaljit Singh *vs.* Managing Director, M/s Premier Automobiles Ltd I (2003) CPJ 8 UT State Commission,

Chandigarh held as follows:

“District Forum had requisite jurisdiction and power to proceed against the defaulter in non-implementation of orders by imposing adequate penalty. In the instant case, as much lesser punishment of fine was imposed, the Forum failed to exercise its jurisdiction hence the order was set aside”.

In *S.K.Bhargava vs. Mahadeva IV* (2004) CPJ 174, Rajasthan State Commission held as follows:

“ The object and purpose of the Act is to ensure as to how the interest of the consumer can be best served. The Act is more concerned with the redressal of grievance of the consumer rather than imposition of punishment on person(s) who failed or omit to comply with the orders of the Forum. It is, therefore, desirable that in administering the provisions contained in section 27 of the Act the person who fails or omits to comply with the order of the Forum, should, in the course of such proceedings, be given at least one and not more than two opportunities to comply with the order and if he fails or omits to comply with the order despite availing such opportunity or opportunities, the legislative intent in forming section 27 should be fulfilled. In any case, the redressal of grievance of the consumer should take precedence to punishment for disobedience of the order of the agency.

Composite Order

A direction to the Railway to provide drinking water in polythene sachets to passengers taking meals and in case of default the General Manager of the Railway, by name would undergo imprisonment for one year was found to be illegal by

the appellate Forum – District Forum does not have such a jurisdiction to pass such an order. The question of punishment arises only when there has been a disobedience of an order already passed and it is not open to the Forum to anticipate disobedience and to pass orders (II (1992) CPJ 524)

The provision of section 27 was quasi-criminal and therefore, before any penalty can be imposed, the delinquent must be given full opportunity to defend his case. In *Jt. Secretary, Gujarat Secondary Education Board vs. Dakshna Ishwarlal Dhorajiya II* (1993) CPJ 1058.

When the person is not impleaded by name (only by designation) proceedings under section 27 against such person for non-compliance are not justified.

In *Ravikant vs. Mrs. Veena Bhatnagar I* (1996) CPJ 260 the National Commission held that the Directors were not personally liable to pay the decretal amount and therefore no complaint could be filed under section 27 of the Act against the appellants personally. But, where the director did not comply with the orders passed by the Redressal Commission they were sent to jail for a period of three months in contrast in *Sambhawana Builders Aggrieved Members vs. Sambhawana Builders Pvt Ltd* 1997 (1) CPR 14 (NC).

Non-compliance of an interlocutory order issued under section 13(3B) is punishable under section 27 of the Act also. (*S.K.Bhargava V Mahadeva*, 2004 (8) CLD 162 Rajasthan).

Before imposing sentence, the District Forum must hear the person against whom a sentence is proposed to be imposed. If it had passed an order imposing sentence without hearing, the Forum had denied a valuable right to the person to bring forth any marginally mitigating circumstances, and it resulted in grave miscarriage of justice. The matter was remitted back to the District Forum. *Rajmani vs. Pichhimuttu*, 2003 (2) CLD 410 (NC).

Belated compliance of order by 9 days. Sentence of rigorous imprisonment for one year set-aside in revision. O.P. sentenced to pay fine of Rs.100/-. III (2001) CPJ 316 TNSC.

In *B.M.Viswanathan vs. National Radio Electronics Co. & Anr* I (2000) CPJ 555 the Kerala State Commission held that the finding of the District Forum that the judgment debtor could not comply with the order of the Forum because the decree holder did not co-operate, can not be sustained. It was not proved whether judgement-debtor made any attempt to comply with the order. Forum coming to a conclusion that there was no willful violation of order is not proper.

Sections 25 and 27

In *Dr.Usha Jain vs. U.P.Awas Parishad & Anr* I (2000) CPJ 598, the Uttar Pradesh State Commission held that sufficient opportunity was not given to the judgement-debtor and instead of sentence order passed against the opposite party a show-cause notice should have been given by the District Forum. The State Commission quashed the order of sentence passed by the District Forum.

In *M/s Rajani Chit Fund (P) Ltd vs. V.Shankaraiah* I (CPJ (2000) 74, the A.P. State Commission held as under “It is represented to us by the learned counsel for the petitioner herein that a copy of the order of the District Forum in P.P.No.14/99 dated 5.10.99 was not furnished to the Petitioner even before he was taken to prison. It is also represented that an application for a copy of that order had been made on 5.10.1999 itself but it had not been handed over immediately. If true, this is a most unfortunate circumstance and District Forum shall see that it shall not happen again. When a person’s liberty has been curtailed, this is a constitutional imperative. The District Forum shall see that if it has happened it shall never happen again. The President of the District Forum shall be informed of this.

Process of warrant is a most stringent and static action, which gravely affects/jeopardizes right of liberty and freedom of a citizen which is a precious right guaranteed under the constitution as one of the fundamental rights, and therefore, it is necessary to exercise caution and be circumspect and not to resort to an action inviting penal consequences. (I (2005) CPJ 308 Maharastra)

Durga Prasad Sharma *vs.* Naved Khan I (2006) CPJ 230. In this case the respondent Naved Khan was ordered to restore the services of the mobile phone of the complainant. Though the defect in service was removed by the respondent, complainant was not satisfied with the services so rendered and therefore made an application under section 27. Forum dismissed the application under section 27. When the matter has gone for appeal to the Rajasthan State Commission, it was held that the interim order is enforceable under section 25(1) of the Act and not under section 27. section 25 contemplates the enforcement of orders by attachment of contemner's property during the pendency of the complaint. Therefore, section 27 is not applicable for enforcement of the interim order.

ANNEXURE - I

RULES THAT GOVERN ISSUE OF CERTIFIED COPIES:

1. Any party to a suit or proceeding shall be entitled to obtain copies of orders made or of any documents exhibited in such suit or proceeding on payment of charges in the manner prescribed.
2. Any person who is not a party to a suit or proceeding requiring copies of orders made or of any documents exhibited in such suit or proceedings may apply to the court for grant of such copies by duly stamped petition supported by an affidavit stating the purpose for which the copy is required

Provided that, in cases of doubt whether, the copy applied for should be furnished, the application shall be placed before the Judge for his decision. If the application is refused by the judge it shall be returned to the applicant with the order of judge endorsed on it.

189: Copies of confidential papers:

Nothing in these rules shall entitle a person to a copy of

- a) Judge's notes or minutes
- b) Correspondence not strictly judicial and
- c) Confidential correspondence

If the application is made properly the preparation of copies of documents applied shall be undertaken in accordance with the serial order of the copy applications. A list of copies ready for delivery shall be pasted on the notice board of the court each day and shall remain thereon for 3 clear working days and if the copy is not claimed by the applicant within 12 months from the date of posting the said list, it shall be destroyed.

Immediately after the copies are delivered to the applicant concerned the entries relating thereto shall be struck

off the list. The lists shall be retained for twelve months after which they shall be destroyed. As and when copies are delivered to the parties, appropriate entries shall be made in the list.

191: Defective application: When an application is returned for amendment, a time limit of 7 days shall be fixed for its representation. A defective application, which is not taken return of by the applicant and not represented within the period specified above shall be struck off.

199: All copies furnished by the court shall be certified to be true copies and shall be sealed with the seal of the court. The authorised person shall initial every alteration and interlineations in the copy and shall sign a certificate at the foot thereof that the same is a true copy and shall also state the no. of alterations and interlineations made therein. Every copy shall bear an endorsement showing the dates on which –

1. the application was made
2. the application was returned
3. the application was represented
4. the charges called for
5. the charges deposited
6. the additional charges called for
7. the additional charges deposited
8. the copy was ready
9. the copy was delivered

The copy application number shall also be noted on every certified copy.

In case the copy application was struck off, restored the following additional details to be noted

1. the date on which the application was struck off
2. the date on which petition was filed to restore the application
3. the date on which the application is restored to file.

More details regarding certified copies in NCDRC Regulations

ANNEXURE - II

BENCH-BAR RELATIONS

The bench and the bar play an important role in the administration of justice. Bench and the bar are the two arms of the same machinery. Unless there is better understanding between the bench and the bar, unless they work harmoniously justice cannot be properly administered through the courts of law. The lawyers have to assist the court in the administration of justice for which they have to collect the case law and thereby help the court to arrive at proper decision of the case. During presentation of the case as well as in arguing the case before the court they are required to behave with dignity and self-respect. At the same time members of the Forum must not allow themselves to be subjected to any influence other than influence of the law and justice of the cause. They must discharge their duties with out fear or favour, affection or ill will.

In *P.D.Gupta Vs Ram Murti*, AIR 1998 SC 283 the Supreme Court has observed that administration of justice is stream, which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something, which concerns the bench only. It concerns the bar as well. Bar is the principal ground for recruiting judges. No one should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently the counsel must have freedom to present his case fully and properly and should not be interrupted by the judges, unless the interruption is necessary. On account of nature of duties to be discharged by the lawyers and judges they may get into dialogue some times humorous, some times harsh and sometimes heated. The heated discussion sometimes results in contempt of court. If the lawyers have in mind that there is contempt law

and may be punished there under and the judges also have in mind that they are not above law, the heated discussion may not lead to an ugly situation.

The role of an advocate in dispensation of justice needs no emphasis. Though there is no need to appoint advocates in the proceedings before the Consumer Forums, experience shows that the involvement of legal professionals is indispensable in consumer disputes. Advocates form part of judicial proceedings and hence their importance need not be over emphasized. Advocates are not only a source of strength to the parties but also assist the courts in understanding the issues, in interpreting the legal provisions and arriving at right conclusions. The co-operation of bar is an essential ingredient for quick disposal of matters. Particularly in summary procedure, without the cooperation of advocates, speedy disposal is a remote possibility. Hence, there is need to be coordination between the bench and the bar for quick disposal. Coordination includes free and frank discussions with advocates, communicating to them the change in rules and regulations and to explain to them the needs of the Forum for speedy disposal in order to have their acceptance for curtailing avoidable delays. Convening periodical meetings with advocates improve co-ordination

The success of judicial system mostly depends on the understanding, cooperation and coordination between the bench and the bar. Sometimes the learned members of the legal profession assist the judicial proceedings. In *VOICE Vs. Registrar, Tamilnadu State Commission*, Justice D.P.Wadhwa, former President of National Commission, particularly mentioned in his order the assistance rendered by a senior advocate M.Gopal Subramaniam as under;

“ It is normal practice to record appreciation of the

assistance rendered by the amicus curiae at the close of the order. In the present case, however, we make a departure and we record our appreciation of the able assistance rendered by Mr. Gopal Subrahmaniam, Senior Advocate, which has benefited us in writing this order. The commission is grateful to him for the deep study he made on the subject and presented all the points with clarity and with his lucid manner". This is an ample testimony to the great services rendered by the members of the bar.

ANNEXURE - III

MODEL FORMS

MODEL FORM FOR ISSUANCE OF CERTIFICATE TO THE DISTRICT COLLECTOR

BEFORE THE DISTRICT CONSUMER
FORUM_____

(CERTIFICATE ISSUED TO DECREE HOLDER FOR
ENFORCEMENT OF ORDER)

Section 25 Clause 3 of Consumer Protection Act, 1986 read
with Section 52B of Revenue Recovery Act

C.C.NO. _____

Between:

..DHr/

Complainant

And

..JDr/

O.P.

Whereas an award has been made in favour of
_____ S/o _____ resident of
_____ in above Consumer dispute on the
_____ day of 2004 against the JDr _____ S/o _____
for recovery of Rs. _____ with interest at _____ till
realisation.

Whereas this District Forum has on the application of
DHr has ordered enforcement of the award in E.P. _____ and a
certificate issued to DHr and that the District Collector,
_____ District is hereby authorised to recover the aforesaid
amount in exercise of the provisions of Revenue Recovery Act
by attachment and sale of the schedule property shown
hereunder belonging to the JDr which is situated within the

revenue jurisdiction of _____ and recovery to be effected as if land revenue is due.

SCHEDULE PROPERTY

(Description of the property)

Given under my hand and seal of the District Consumer Forum,
this _____ day of _____ 2005.

PRESIDENT

DIST FORUM/STATE COMMISSION/ NATIONAL COMMISSION

ADDRESS_____

_____ Complaint case No. _____
Versus _____ Executive case No. _____

_____ To

Through

Sr. Supdt. of Police/Police Commissioner

WARRANT

(Section-70 Cr.P.C. read with Section-27 Consumer Protection Act, 1986)

Whereas (name of the JDr) Sri S/
o.....R/o.....stands charged with the
offence of non-compliance of Judgment/Order dated
of District Forum/State Consumer Disputes Redressal
Commission..... for which show cause notice has been
issued onas to why he be not punished under
Section-27 of the Consumer Protection Act, 1986.

Hence, you are, hereby directed to arrest the said person
and to produce him before the Forum/Commission on
Herein fail not.

If the said Sri..... offers to and gives bail for the
decretal amount of Rs..... and interest on the aforesaid
amount totaling Rs..... by executing personal bond of
Rs..... along with two securities each for Rs....., he may
be released on bail with the direction to appear in person before
the District Forum/Commission on..... If he is released on
bail by you those bail papers shall be produced by you before

the District Forum/State Commission on the said order date
(.....)

Dated this.....day of20....

(Seal)

PRESIDENT

WARRANT OF COMMITMENT OF A SENTENCE OF IMPRISONMENT OF FINE IF PASSED BY A COURT

(See Sec 235, 248 and 255 CR.P.C)

To

The Officer in charge of the jail at

Whereas on the _____day of _____(name
of the prisoner), the (1st, 2nd, 3rd as the case may be) prisoner in
case No.—— of the calendar for —— was convicted before me—
——(Name & Official designation) of the offence of ——
(mention the offence or offences concisely) under Sec —— of
—— was sentenced to (State the punishment fully and
distinctly);

This is to authorise and require you to receive the said
(Prisoner's name) into your custody in the said jail together
with this warrant, and thereby carry the aforesaid sentence
into execution according to law.

Dated thisday of

Seal of the Court

PRESIDENT

WARRANT FOR APPOINTMENT OF COMMISSIONER

**BEFORE THE DISTRICT FORUM/STATE
COMMISSION**_____

I.A.NO._____ **IN C.C.NO.**_____

Between:

_____ ... Petitioners/
Complainants

Vs

_____ ... Respondent/Opp.Party
To

_____,
Advocate-Commissioner,

Whereas you are hereby appointed as Commissioner to inspect the petition scheduled property and to verify the physical features of _____ situated at _____

You are hereby directed to issue notice to both parties before execution of the warrant with regard to date and time of inspection of the petition scheduled property.

Copy of petition is enclosed herewith.

Your fee is fixed at Rs._____ payable by the petitioner and you are hereby directed to file the fee receipt along with your report with regard to receipt of fee from the petitioners.

You are also hereby directed to submit your report on or before.

Given under my hand and the seal of this Forum/Commission, this the day of 200.

PRESIDENT

WARRANT TO THE GARNISHEE FOR ATTACHMENT OF MOVABLE PROPERTY

**BEFORE THE DISTRICT CONSUMER FORUM/ STATE
COMMISSION—————**

E..P.NO. _____ IN C.C.NO._____

Between:

Petitioner/DHR

And

Respondents/JDrs

To

_____ (Address of the Garnishee)

Sir,

The Petitioner/DHr, _____in E.P. No. _____ in C.C.No._____on the file of this Forum having applied under Order XXI, Rule 52 of the Code of Civil Procedure, for an attachment of Rs. (Rupees _____only) lying in _____relating to the above named JDrs in C.C.No.._____ on the file of Dist.Consumer Forum/State Commission.

Hence, I request to hold the said amount of Rs._____— relating to the JDrs _____without disbursing the same to the above named JDrs under any circumstances until further orders from this Forum/State Commission.

Given under my hand and seal of this Forum dated this,
the day of _____ Nov, 200.

PRESIDENT

NOTICE ISSUED TO THE J.DR FOR ATTACHMENT OF MOVABLE/ IMMOVABLE PROPERTIES

**BEFORE THE DISTRICT CONSUMER FORUM/STATE
COMMISSION**

**SHOW CAUSE NOTICE UNDER SECTION 25 OF
CONSUMER PROTECTION ACT,1986**

E.P.NO._____ IN C.C.NO._____

BETWEEN:

Complainant/D.H.R

.... Petitioner/

And

/J.D.R.

....Respondent/ Opp.Party

Whereas the Petitioner/Complainant in C.C.No._____ on the file of this Forum/State Commission has filed the aforesaid Execution Petition Under Sec.25 of the C.P.Act, 1986 alleging that you have failed to comply with the order dated._____ and passed in C.C. _____ on the file of this Forum .

The Complainant/D.H.R. filed above Execution Petition under Section 25 of C.P.Act, 1986 requesting this Forum to attach your Movable/immovable properties according to law as per amended C.P.Act .

Show cause why the aforesaid Execution Petition should not be allowed and why should not your Movable/ Immovable properties are to be attached according to Sec.25 of C.P. Act.

Take notice that the above said petition has been posted before this Forum/State Commission on _____
A copy of the Execution Petition is herewith enclosed.

Take further notice that in case of your failure to appear before this

Forum on _____ at 10-30 A.M. either in person or by advocate an ex-parte order will be passed against you, and necessary steps will be taken in the matter according to act..

Given under my hand and seal of this Forum dated this the _____ day of _____.

//By order/

REGISTRAR,

**HEARING DATE:
Forum/State Commission**

District Consumer

**NOTICE ISSUED TO JDERS FOR ISSUE
OF CERTIFICATE TO THE COLLECTOR
FOR ENFORCEMENT OF THE ORDER
PASSED BY THE REDRESSAL
AGENCIES**

**BEFORE THE DISTRICT CONSUMER FORUM/STATE
COMMISSION—————**

**SHOW CAUSE NOTICE UNDER SEC. 25(3) OF THE
CONSUMER PROTECTION ACT, 1986**

E.P.NO.————— IN C.C.NO.—————

BETWEEN:

—————

Petitioner/Complainant/

D.Hr.

And

—————

Respondent/

Opp.party/J.Dr.

Whereas the Petitioner/Complainant in C.C.No.———
on the file of this Forum/Commission has filed the aforesaid
enclosed Execution Petition under Section 25 (3) of the C.P.Act,
1986 alleging that you have failed to comply with the order
dated —— and the same was passed in ——on the
file of this Forum/StateCommission and requesting this Forum/
Commission to give a certificate to the District Collector, ——
——to attach the properties of ——
——and recover of his decretal amount
made in the said E.P. by him as on the date of filing of E.P.
before this Forum i.e., up to —— as per the order of this
Forum in C.C.No.——on the file of this Forum dated ——
——like as arrears of land revenue collected by the District

Collector, from the above Opp. Parties, under Section 25(3) of the Consumer Protection Act, according to law as per amended C.P. Act.

Show cause why the aforesaid Execution Petition should not be allowed and why should not your Immovable properties have to be attached by giving a certificate by the District Collector, —————to collect the decretal amount of the D.Hr./Complainant as per the Execution Petition filed according to Section 25 (3) of C.P. Act.

Take notice that the above said petition has been posted before this Forum on —————

Take further notice that in case of your failure to appear before this Forum on ———at 10-30 A.M either in person or by advocate an ex-parte order will be passed against you, and necessary steps will be taken in the matter according to act.

Given under my hand and seal of this Forum, dated this the day of, ——200.

// By Order //

HEARING DATE:

REGISTRAR

ORDER REQUIRING PRODUCTION IN THE FORUM OF PERSON IN PRISON

FOR ANSWERING TO CHARGE OF NON COMPLIANCE OF THE ORDER

PASSED BY THE FORUM/STATE COMMISSION

BEFORE THE DISTRICT FORUM/STATE COMMISSION—

To
The Superintendent,
District/Central Jail,

Whereas, _____, S/o. _____
—R/o—, who is J.Dr. in P.P.No. _____ in C.C.No. _____ on
the file of this Forum/State Commission, who is now at present
in your custody in various Criminal Cases relating _____
_____ is required
in the District Consumer Forum/State Commission to give his
answer for the charge of non-compliance of the order passed
by this Forum in C.C. _____ dated _____ to produce the
above said J.Dr. _____ S/o. in P.P.No. _____ in C.C.No.—
_____ on the file of this Forum on _____, on which date the
case stands posted for and the appearance of the above named
J.Dr. and enquiry.

You are hereby required to produce the said _____
S/o _____ under safe custody before this Forum on _____
_____ to answer the said charge U/S. 27 of Consumer
Protection Act, 1986 and after this Forum has dispensed with
his further attendance cause him to be conveyed under safe
and sure custody back in this prisoner.

Given under my hand and seal of this Forum, this the
_____ day of _____, 200

PRESIDENT

**BEFORE THE DISTRICT CONSUMER FORUM/STATE
COMMISSION————**

**NOTICE UNDER SECTION 27 OF THE CONSUMER
PROTECTION ACT, 1986**

P.P.No. _____OF_____

IN

C.C.No. _____

Between:

| | |
|------------------|---------------------------|
| (Name & Address) | ..Petitioner/Complainant/ |
| Dhr | |
| And | |

| | |
|------------------|-----------------|
| (Name & Address) | .. Respondents/ |
| O.Ps./JDrs | |

Whereas the Petitioner/Complainant in C.C.No. on the file of this Forum has filed the aforesaid application under Sec 27 of the C.P.Act, 1986 alleging that you have failed to comply with the order dated and passed by this Forum in the aforesaid complaint.

Whereas the Petitioner/Complainant has approached this Forum for proceeding against you under Sec 27 of the C.P.Act, 1986 and to sentence you to undergo imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than 2,000/- but which may extend to Rs.10,000/- or with both.

Show cause why the aforesaid application should not be allowed and why should not be sentenced to undergo imprisonment and pay fine.

Take notice that the above said petition has been posted to . A copy of the petition is herewith enclosed.

Take further notice that in case of your failure to appear before this Forum on _____ at _____AM either in person or by advocate an order will be passed against you ex-parte.

Given under my hand and seal of this Forum dated this, the ____ day of_____, 200.

Hearing Date : _____

// By order//

**REGISTRAR,
DIST.FORUM/STATE COMMISSION**

ANNEXURE - IV

LEGAL DICTIONARY

1. Amicus Curiae : Friend of the court, One who voluntarily or on invitation of the court and not on the instructions of any party helps the court in any judicial proceedings.
2. Suomotu : On its own motion
3. Prima facie : On the face of it, at first sight, based on the first impression
4. Locus standi : A place to stand
5. Ex-parte : In the absence of the party
6. Bonafide : In good faith; without fraud or deception
7. Malafide : In bad faith
8. In limine : At the outset, Preliminarily, on the threshold
9. Res judicata : A case or suit already decided
10. Force majeure : Circumstances beyond one's control, Irresistible force or compulsion
11. Parimateria : Upon the same matter or subject
12. Ab initio : From the beginning
13. Per se : By himself or itself, inherently; in itself
14. Interalia : Among others
15. De novo : A new, afresh, a second time, again
16. Functus officio : One who has fulfilled his office or is out of office; an authority who has performed the act authorised so that the authority is exhausted
17. Status quo : The existing state of things to any given date; existing condition
18. Non est : Non-existent
19. Qua : Considered as; in so far as; in the character or capacity of

- 20. Defacto : Infact, actually
 - 21. Subrogation : Substitution of one person in the place of another with reference to a lawful claim
 - 22. Garnishee : A person in whose hands a debt is attached
 - 23. Ipso facto : By the fact itself, by the very act itself
 - 24. Lis pendens : a pending suit
 - 25. Estoppel : An estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is effected by it is not permitted to contradict it
 - 26. Action Personalis: Personal action dies with death of mortitur cum person
persona
-
- 1. Actus curiae neminem gravabit: An act of court shall prejudice no man
 - 2. Audi Alteram Partem: No one should be condemned unheard
 - 3. Res-Ipsa loquitur: The thing speaks for itself
 - 4. Ignorantia Juris non excusat: Ignorance of law is no excuse
 - 5. Mutadis mutandis : With the necessary changes in points of detail
 - 6. Sine qua non: An indispensable condition, An indispensable requisite
 - 7. Stare decisis: Abide by the decisions
 - 8. Ration decidendi : Reasons for deciding the grounds of decision

9. **Obiter Dicta** : In the course of a suit many incidental questions arise indirectly connected with the main question for consideration, the observations on such questions whether casual or of collateral relevance are known as obiter dicta or dicta
10. **Abate**: To diminish or take away, to put an end to, to curtail (O.22 R.1 CPC)
11. **Void**: Not valid, of no effect; invalid
12. **Dejure**: Legitimate, lawful, according to law of right
13. **Decree**: A formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final
14. **Judgment**: Judgment means the statement given by the judge on the grounds of decree or order, judicial determination or decision of a court.
15. **Interim order**: A temporary court order. Some order in the course of proceedings not being a final order
16. **Interlocutory application**: An application made in the court of an action, an application made for keeping things in status quo till the rights can be decided or for the purpose of obtaining interim direction of the court
17. **'Ex Nudo pacto non oritur actio'** which means that no cause of action would arise from a bare promise' must be born in mind. A bare promise can be understood as a promise obtained without consideration. In other words there is no remedy to compel the performance of an agreement made without sufficient consideration. No cause of action accrues to a person who has not paid any consideration to the other party.

ANNEXURE - V

REGULATIONS

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

NOTIFICATION

NEW DELHI, THE 31ST MAY 2005

G.S.R.342 (E) : In exercise of the powers conferred by Section 30A of the Consumer Protection Act, 1986 (68 of 1986), National Consumer Disputes Redressal Commission with the previous approval of the Central Government, hereby makes the following regulations, namely:-

1. Short title and commencement (1) These regulations may be called the Consumer Protection Regulations, 2005
(2) They shall come into force on the date of their publication in the Official Gazette.
2. Definitions: In these regulations unless the context otherwise requires
 - (a) "Act" ["(‘‘ means the Consumer Protection Act, 1968 (68 of 1986)
 - (b) "Consumer Forum" ["(‘‘ means a District Forum, a Consumer Disputes Redressal Commission established in a State under clause (b) of Section 9 (hereinafter called the State Commission) or the National Consumer Disputes Redressal Commission;
 - (c) "Registrar" ["(‘‘ means the head of the ministerial establishment of the Consumer Forum and exercising such powers and functions as are conferred upon him by the President of the Consumer Forum

- (d) “Rule” [“(c)–” means the rules made under the Act;
 - (e) “Section” [“(c)–” means a section of the Act;
 - (f) words and expressions used in these regulations and not defined herein but defined either in the Act or in the rules shall have the same meaning respectively assigned to them either in the Act or in the rules, as the case may be.
3. Arrangements in Consumer Forum:
- (1) A Consumer Forum, being not a regular court, shall have the arrangements as to depict it distinct from a court.
 - (2) In the hall in which the Consumer Forum shall hear the parties, the dais may not be kept more than 30 cm in height than the place earmarked for the parties to occupy.
 - (3) At the dais of the hall, the President and the members of the Consumer Forum shall use the same type of chairs at the same level and these chairs need not have high backs.
4. Dress Code: (1) The President and members of every Consumer Forum while presiding over the Benches,
- (a) shall wear simple and sober dress;
 - (b) shall not wear
 - (i) flashy dress or dress display any affluence
 - (ii) Jeans or T-shirts
 - (iii) As if they are holding Courts as judges of a High Court or a District Court
- (2) The advocates shall be allowed to appear in the usual dress as prescribed by the High Court but without the gown.

5. Hearing hours: Subject to the provisions of the rules, the normal working hours of the Consumer Forum for hearing matters shall be from 10.30 a.m to 1.00 p.m and 2.00 p.m. to 4.00 p.m. on all working days of the Central Government in the case of the National Commission and on all working days of the State Government in the case of the State Commission and the District Forum.
6. Cause List: (1) Cause list of the Consumer Forum for the following entire week shall be made ready before the close of the working hours of the preceding week and displayed on the notice board. The cause list in respect of a Consumer Forum having a website shall also be hosted on the website.
 - (2) Cause list shall be split into three different parts, namely:-
 - (i) Admission and after notice matters;
 - (ii) Matters where evidence is to be recorded;
 - (iii) Final disposal matters
 - (3) Every cause list shall contain the following particulars namely:-

| | | |
|-----------------|-------------------------------------|-------------------------|
| (1) Sl. No. | (2) No. of the matter | (3) Name of the parties |
| (4) Name of the | party or counsel or agent appearing | |

(4) If a date of hearing is given in the presence of parties or their agents, it shall not be a ground for non-appearance for the reason that the cause list for the concerned date does not show the matter or contains incorrect entry or there is omission of particulars of the matter.

7. Institution of Complaints, appeals and revision petitions:
 - (1) Where a complaint is filed in District Forum or State Commission it shall be filed in three sets and where it is filed in the National Commission it shall be filed in four sets with additional sets equal to the number of the opposite party (ies) / respondent(s).
 - (2) Every complaint shall clearly contain particulars of disputes and the relief claimed and shall also be accompanied by copies of such documents as are necessary to prove the claim made in the complaint.
8. Nomenclature to be given to the complaints, appeals and revision petitions.
 - (1) A complaint shall herein after be referred to as Consumer complaint (C.C.) instead of O.P. Eg., C.C.No. 2 of 2005
 - (2) An appeal shall be referred to as F.A. Revision Petition as R.P. Execution Application as E.A., Transfer Application T.A. and Review as RA containing the number and the year of filing.
9. Scrutiny of complaint, appeal, petition and revision petition:
 - (1) Every complaint, appeal, or revision petition shall after it is filed be numbered by the Registrar.
 - (2) If there is any defect in the filing of the complaint, appeal or revision petition, the particulars of such defects shall be recorded and the party or his agents shall be informed of the defects asking them for removing the defects within 15 days.

- (3) In case the party disputes the correctness of the defects pointed out the matter shall be placed before the Consumer Forum for appropriate orders.
 - (4) After expiry of the time given, the matter shall, irrespective of the fact as to whether the defects have been removed or not, be placed before the Consumer Forum for appropriate orders.
 - (5) If the objections raised by the Registrar are substantial and are not removed within the time allowed for the purpose, those days shall not be excluded for counting the period of limitation.
 - (6) As required by the second proviso to sub-section (3) of Section 12, the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.
 - (7) In case any defect is pointed out by the Registrar, twenty-one days from the date on which such defect was removed shall be reckoned for the purpose of sub-regulation (5)
 - (8) All pending complaints, appeals and revision petitions which have not come up for admission till the date of commencement of these regulations and are pending for admission for more than 21 days shall be listed immediately by the Consumer Forum for admission and not later than 21 days from the date of commencement of these regulations.
10. Issue of notice
- (1) Whenever the Consumer Forum directs the issuance of a notice in respect of a complaint, appeal or revision petition, as the case may be, to the opposite party (ies) / respondent(s), ordinarily such

notice shall be issued for a period of 30 days and depending upon the circumstances of each case even for less than 30 days.

- (2) When there is a question of raising presumption of service, 30 days notice shall be required
- (3) Whenever notices are sought to be effected by a courier service, it shall be ascertained that the courier is of repute
- (4) While appointing the courier for the purpose of effecting service, security deposit may also be taken
- (5) Along with the notice, copies of the complaint, memorandum of grounds of appeal, petitions as the case may be and other documents filed shall be served upon the opposite party (ies) / respondent(s)
- (6) After the opposite party or respondent has put in appearance, no application or document shall be received by the Registrar unless it bears an endorsement that a copy thereof has been served upon the other side.

11. Adjournment:

- (1) Every proceeding before a Consumer Forum shall be conducted as expeditiously as possible and as per the requirements of the Act.
- (2) The Consumer Forum shall record the reasons for any adjournment made by it.
- (3) The cost of adjournment, if asked by the opposite party or parties, shall not be less than five hundred rupees per adjournment and could be more depending up on the value and nature of the complaint as may be decided by the Consumer Forum.

- (4) The complainant, appellant or petitioner, as the case may be, may also be burdened with cost unless sufficient cause is shown for seeking adjournment: Provided that in the circumstances of a particular case, the amount of cost imposed may be less than five hundred rupees but in no case less than one hundred rupees.
 - (5) The cost imposed may be given to the other party or parties to defray his or their expenses or be deposited in the Consumer Legal Aid Account to be maintained by the respective Consumer Forum, as the Consumer Forum may order.
 - (6) If any adjournment is granted without awarding cost, the order sheet shall mention the reasons thereof.
 - (7) All orders adjourning the matter shall be signed by the President and Members constituting the Bench and not by the Court Master or Bench Clerk.
 - (8) Non-availability of a lawyer who is representing the party shall not be a ground for seeking adjournment of the matter unless absence is beyond the control of the lawyer such as his sudden illness or bereavement in the family.
12. Hearing by Benches: Where a Bench, constituted by the President of the State Commission or the National Commission as provided under Section 16 or Section 20, as the case may be, does not have a member with judicial background and any complex question of law arises and there is no precedent to decide the law point, the Bench so constituted may refer the matter to the President of the State Commission or the National

Commission as the case may be to constitute another Bench of which the President shall be a Member.

13. Arguments:

- (1) Arguments should be as brief as possible and to the point at issue
- (2) Where a party is represented by a counsel, it shall be mandatory to file a brief of written arguments two days before the matter is fixed for arguments.
- (3) In case of default to file briefs, the cost shall be imposed at the same rates as laid down for grant of adjournments

14. Limitation:

- (1) Subject to the provisions of Sections 15, 19 and 24A, the period of limitation in the following matters shall be as follows: -
 - (i) Revision Petition shall be filed within 90 days from the date of the order or the date of receipt of the order as the case may be;
 - (ii) Application for setting aside the ex-parte order under Sec 22A or dismissal of the complaint in default shall be maintainable if filed within 30 days from the date of the order or date of receipt of the order, as the case may be;
 - (iii) An application for review under sub-section (2) of Section 22 shall be filed to the National Commission within 30 days from the date of the order or receipt of the order, as the case may be;
 - (iv) The period of limitation for filing any application, for which no period of limitation has been specified in the Act, the rules of these regulations shall be thirty days from the date of cause of action or the date of knowledge.

- (2) Subject to the provisions of the Act, the Consumer Forum may condone the delay in filing an application or a petition referred to in sub-regulation (1) if valid and sufficient reasons to its satisfaction are given.
15. Review: (1) It shall set out clearly the grounds for review.
 - (2) Unless otherwise authorised by the National Commission, an application for review shall be disposed of by circulation without oral arguments, as far as practicable between the same members who had delivered the order sought to be reviewed.
16. Appearance of Voluntary Consumer Organisations:
 - (1) Recognised Consumer Organisations have a right of audience before the Consumer Forum
 - (2) An authorization of a Voluntary Consumer Organisation may be by way of special power of attorney executed on a non-judicial paper or even on plain paper duly attested by a Gazetted Officer or a Notary public
 - (3) The Power of Attorney holder shall be entitled to engage a counsel, if authorised to do so
 - (4) A Voluntary Consumer Organisation can engage a counsel or an advocate of its choice or it can itself represent through one of its office bearers as per the rules governing it.
 - (5) In case of a complaint where the Voluntary Consumer Organisation is a complainant along with the consumer himself and the dispute affects the complainant individually, he can withdraw the complaint

Provided that if the issue involves unfair trade practice or restrictive trade practice a Voluntary Consumer Organisation may continue to proceed with the complaint even if the complainant wishes to withdraw the same

- (6) A Consumer Forum has to guard itself from touts and busybodies in the grab of power of attorney holders or authorised agents in the proceedings before it.
- (7) While a Consumer Forum may permit an authorised agent to appear before it, but authorised agent shall not be one who has used this as a profession;

Provided that this sub-regulation shall not apply in case of advocates.

- (8) An authorised agent may be debarred from appearing before a Consumer Forum if he is found guilty of misconduct or any other malpractice at any time
17. Ex-parte Interim order: Any ex-parte interim order issued by the Consumer Forum shall stand vacated after 45 days if in the meanwhile the objections to the interim order are not heard and disposed of.
 18. Final Order
 - (1) An order on the top right hand corner shall show as to when the complaint was filed and the date of the order.
 - (2) The cause title of the order shall contain the names of all the parties with their addresses.
 - (3) In the body of the order it is desirable that after mentioning the complainant or the opposite party, their names as shown in the title be mentioned and

parties thereafter may not be mentioned as complainant or opposite party No.1 or Opposite Party No.2 etc.

- (4) The cause title shall also clearly show if the appellant or respondent was the complainant or opposite party
- (5) The order of a Consumer Forum disposing of a matter shall be as short and precise as practicable and unnecessary long quotations from the judgments of the higher courts or otherwise shall be avoided.
- (6) When a copy of the order is sent to party, the mode by which it is sent and the date on which it is sent shall be stamped on the last page of the order.
- (7) The Consumer Forum shall pass final order invariably within fifteen days of the conclusion of the arguments.

19. Return on institution and disposal of cases:

- (1) A Consumer Forum is expected to dispose of at least 75 to 100 matters every month.
- (2) A periodic monthly return of institution and disposal of cases shall be sent by the District Forums to the State Commission
- (3) The State Commission shall submit a periodical monthly return of institution and disposal of cases to the National Commission
- (4) Notwithstanding anything contained in this regulation, the President of the National Commission may, at any time call for any return or information relating to its functioning from a State Commission or District Forums

20. Preservation of record: (1) In the case of complaint, the

record containing main files with original order sheet shall be preserved for a period of five years.

- (2) In the case of records of first appeal and revision petitions, it shall be preserved for three years from the date of disposal of the appeal or revision as the case may be.
- (3) Immediately after the consumer complaint, first appeal or revision petition, as the case may be, is disposed of extra sets shall be given to the parties who may use the same for filing of appeal or revision petition and in that case the necessity to summon the record from the forums below can be dispensed with.
- (4) The Registrar shall inform the parties while forwarding the certified copy of the final order, where they do not appear in person at the time of finally disposing of the matter to arrange to collect the extra sets.
- (5) A period of at least one month shall be given for the purpose of collection of records by the party and in case of default the extra sets shall be weeded out.

21. Certified copy:

- (1) A copy of the order is to be given to the parties free of cost as required under the Act and the rules made there under.
- (2) In case a party requires an extra copy, it shall be issued to him duly certified by the Registry on a payment of Rs.20/- irrespective of number of pages
- (3) A certified copy of an order shall clearly specify the date when free copy was issued, date of application, date when the copy was made ready and the date when it was so delivered to him.
- (4) A fee of Rs.20/- shall be paid for obtaining another certified copy

- (5) Any party desiring to get a certified copy of any document on the file of the Consumer Forum, may get the same on payment of certification fee of twenty rupees per copy. Provided that if any such document of which certified copy is sought, is over and above 5 pages, an extra amount of one rupee per page shall be charged over and above the fee of twenty rupees.
- (6) Certified copy of any miscellaneous order passed by the Consumer Forum shall be supplied on payment of Rs.5 per copy.
- 22. Inspection of records: Parties or their agents can inspect the records of any matter by filing an application on payment of ten rupees as fee.
- 23. Filing of criminal complaint: Wherever a complaint is required to be filed by the Consumer Forum under sub-section (5) of Section 13, the Consumer Forum may authorise its Registrar to file the complaint.
- 24. Practice Directions: The National Commission shall be entitled to issue practice direction from time to time as may be necessary for the proper conduct of the cases before Consumer Forum including prescribing forms for complaints, notices, returns, certificate to be issued to the Collector and the like.
- 25. Paresha Yad-dast: Where a party appears in person and is illiterate, the Court Master or bench clerk shall give to that party the next date of hearing in writing.
- 26. Miscellaneous:
 - (1) In all proceedings before the Consumer Forum, endeavour shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908)

Provided that the provisions of the Code of Civil Procedure, 1908 may be applied which have been referred to in the Act or in the rules made there under.

- (2) Every State Commission and every District Forum shall take steps for its computerization and networking.
- (3) The Consumer Forum shall give proper respect and courtesy to the parties who appear in person and shall provide separate accommodation in the Hall for the convenience of the parties
- (4) The Consumer Forum shall not insist upon the parties to engage advocates
- (5) The fees collected for inspection of the documents and supply of certified copies shall be deposited in the account maintained for the purpose of depositing fee for filing a complaint as prescribed by the Central Government by rules.
- (6) The cases filed by or against the senior citizens, physically challenged, widows and persons suffering from serious ailments shall be listed and disposed of on a priority basis.

ANNEXURE - VI

TIME SCHEDULE FOR CONSUMER DISPUTES

1. Complaint should be filed within 2 years from the date on which cause of action has arisen (Sec 24-A)
2. A decision either to admit complaint or reject shall be made within 21 days {Sec 12(3)}
3. On admission of complaint, a copy of the complaint shall be referred to opposite party within 21 days {Sec 13(i)(a)}
4. Time that shall be given to opposite party to file his counter is 30 days but may be extended for a period of 15 days {Sec 13(a)}
5. 45 days time shall be given to appropriate laboratory for the required analysis {sec 13(c)}
6. Endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party. If it requires laboratory analysis, within five months {Sec 13(3A)}
7. Thirty days time is allowed for filing an appeal in State Commission/National Commission and Supreme Court against the order of the lower Forum (Section 15, 19 and 23)
8. Attachment in interim order shall not remain in force for more than three months {Sec 25(2)}
9. Appeal under Sec 27 shall be made within 30 days (Sec 27A)
10. Declaration as to the service of notice to the opposite party shall be made within thirty days from the date of issue of notice (Sec 28A)
11. Appeal shall be disposed within ninety days from the date of its admission (Sec 19-A)

ANNEXURE -VII

APPEARANCE OF ADVOCATES/AGENTS

Appointment of Advocate:

Every vakalatnama shall be executed or its execution attested before a judicial functionary, a Gazetted Officer, a Member of Legislature or Member of Parliament or Member of Gram Panchayat, Sarpanch, Upasarpanch constituted under the Gram Panchayat Act or a Member of the Panchayat Samithi or Zilla Parishad, a Municipal Councilor, Village Headman or a retired Gazetted officer receiving pension from the Government or before a Commissioned Military Officer or an Advocate other than the Advocate in whose favour the vakalatnama is executed or appointment made before any sub-Registrar of the Registration Department who shall subscribe his own signature with designation on the vakalatnama in authentication of its execution of attestation. When the executant of a vakalatnama is himself a public officer of whose signature a court may take judicial notice, authentication on the vakalatnama may not be necessary.

A statement of the advocate's address for service shall be endorsed on the vakalatnama and subscribed with his own signature by the advocate.

When the attesting officer is not personally acquainted with the executant of a vakalatnama the attesting officer shall mention the name and address of the person who identifies the executant and obtain his signature

32. Party appearing by agent:

1. When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application or act, in or to the court, file in court

the power of attorney, or written authority, there unto authorizing him or a properly authenticated copy there of together with an affidavit that the said authority still subsisting or in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating that the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorised to make or do such appearance, application or act.

The presiding officer may there upon record in writing that the agent is permitted to appear and act on behalf of the party and unless and until the said permission is granted, no appearance, application or act, of the agent shall be recognized by the court.

In P.C. Mishra Vs. Sky View Home Cable I (2003) CPJ 416 the Orissa State Commission held that an advocate because of his having a license and thus an authority under the Advocates Act has a right to appear and argue a case before a court of law. This right under the Advocates Act is not available to any person who is not an advocate, though he may be having law degree to his credit or may be expert on the subject. Therefore, a person even though authorized by a party, who is not an advocate, can not claim, as of right, to argue a matter before any court and even a consumer court. Certain specific provisions of CPC have been made applicable and also the principles of the CPC are applied in appropriate situations for adjudication of disputes. But that does not mean that a person who is himself a party cannot plead his case. There is a constitutional guarantee by the person who is a party to the litigation has a right to place his case in any court of law, and for that he does not need authority.

So far as authorized agent is concerned, it is noticed that they are appearing on the basis of a bare authority signed by the complainant on a plain paper. This is not permissible in any circumstances. It is prescribed in Order 3 Rule 1 that the party may appear in person or by recognized agent or by pleader. C.P.C describes that the person who act as agent or as recognized agent for a party must be holding the Power of Attorney under the Power of Attorney Act.

In another case, Tamilnadu State Commission I (2003) CPJ 464 held that the advocates practicing the profession of law alone are entitled to charge for the professional services they are rendering. The authorized representatives of consumer associations not having been enrolled as an advocate are not at all entitled to charge any fees for the services they are rendering in prosecuting the complaint before the Fora. If authorized representatives of the consumer associations charge any such fee for rendering of services, such sort of an act deserves to be condemned.

ANNEXURE -VIII

VARIOUS COURT ORDERS AND THEIR BINDING EFFECT ON CONSUMER FORA

- The apex court orders are binding on all the courts in India
- When there is a conflict in the supreme court judgements divisional bench order prevails
- If there are conflicting judgements of divisional benches of Supreme Court the subsequent judgement prevails over the earlier judgement
- All the courts in the state must necessarily follow the judgement of the high court in whose jurisdiction they are functioning
- So long as there is no decision of the local high court the decision of the extra territorial High court should be followed
- When there is no judgement of the local High court and if there is a conflict on the point between the judgements of other High courts any judgement given by the extra territorial high court which is appealing may be followed
- If there is no principle laid down, but the extra territorial court in its discretion passes an order that order binds only the party against whom that order is passed. One has to see the scope of the order. If the scope of the order is such that it operates against parties out side the jurisdiction of that court it has to be followed.

ANNEXURE - IX

PRINCIPLES OF NATURAL JUSTICE

Natural justice is justice that is simple and elementary as distinct from justice that is complex, sophisticated and technical. As the intent of the Consumer Protection Act is to remove hyper technicalities and complex procedures; principles of natural justice attain importance in the adjudication of consumer disputes by the quasi-judicial bodies established under the provisions of Consumer Protection Act. The principles of natural justice are fundamental rules of procedure are neither fixed nor prescribed in any code. Natural justice has meant many things to many people. It is also known as 'substantial justice', 'fundamental justice', 'universal justice' or 'fair play in action'. This principle of natural justice is to invest law with fairness, to secure justice and to prevent miscarriage of justice. According to de Smith the term natural justice expresses a close relationship between the common law and the moral principles.

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the inquiry is held and the constitution of the tribunal or body of persons appointed for the purpose as held in *A.K.Kripak Vs. Union of India* AIR 1970 SC 150. It is further held that whenever a complaint is made before a court that some principles of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

English law recognises two principles of natural justice

1. *Nemo debet Esse Judex in propria causa* ; which means that no man shall be a judge in his own case, or the

deciding authority must be impartial or without bias; and

2. Audi Alteram Partem; which means and which suggests to hear the other side, or both the sides must be heard, or (no man should be condemned unheard), or that there must be fairness on the part of the deciding authority.

The first principle of natural justice against bias is based on three maxims.

1. No man shall be a judge in his own cause
2. Justice should not only be done, but manifestly and undoubtedly be seen to be done
3. Judges should be above suspicion

GENERAL PRINCIPLES ESTABLISHED IN NATURAL JUSTICE

1. The adjudicating authority must be impartial and should not have any interest or bias of any type
2. The adjudicating authority should not delegate its authority to any other officer while exercising the judicial or quasi-judicial power. The order must be made by that authority only. Full opportunity must be given to the affected person to produce all the relevant evidence in support of his case;
3. The affected person must have full opportunity to produce all relevant evidence in support of his case;
4. Material placed before the adjudicating authority must be disclosed in the course of the proceedings and can not utilise any material unless an opportunity is given to the party against whom it is sought to be utilised;
5. The adjudicating authority must give an opportunity to the party concerned to rebut the evidence and material placed by the other side. It does not necessarily mean that the party has a right of cross-examination of witnesses. It depends upon the facts and circumstances

of each case and statutory provisions

6. Oral or personal hearing can not be claimed as of right since it is not a part of natural justice
7. The adjudicating authority is not always bound to give reasons in support of its order, but the recent trend is that it is considered to be a part of natural justice.
8. If hearing is not given by the adjudicating authority to the person concerned violating the principles of natural justice, the order is void;
9. Hearing should be afforded before a decision is taken and not afterwards;

The principles of natural justice may be excluded in the following circumstances:

1. Where a statute either expressly or by necessary implication excludes application of natural justice;
2. Where the action is legislative in character, plenary or subordinate
3. Where the doctrine of necessity applies;
4. Where the facts are admitted or undisputed;
5. Where the inquiry is of confidential in nature;
6. When preventive action is to be taken;
7. Where prompt and urgent action is necessary;
8. Where nothing unfair can be inferred by non-observance of natural justice;

Section 13(3): No proceeding complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with. However, it is necessary for the adjudicating authority to follow the principles of natural justice in the interest of equity.

ANNEXURE - X

MINUTES OF THE MEETING HELD BY THE DEPARTMENT OF CONSUMER AFFAIRS WITH SECRETARIES INCHARGE OF CONSUMER AFFAIRS OF STATES/UTS ON 15TH JULY 2005

- I. Improving the Efficiency of Consumer Forums (Justice M.B.Shah's address)
 - i) To bring about transparency and increase efficiency of Consumer Forums, a list of cases decided every week should be made public through press releases and also hosted on website of the State Government
 - ii) Performance of Presidents and Members of Consumer Forums should be reviewed at least once in two years. Suitable provisions should be made for removal of President/Member of Consumer Forums not only on account of misconduct and malfunctioning but also for non-functioning or ineffective functioning
 - iii) Every Consumer Forum should try to dispose of 20 to 25 cases per week on the pattern of Lok Adalats
 - iv) Advance action should invariably be taken for filling up vacancies of Presidents/Members of Consumer Forums to ensure that no Consumer Forum remains non-functional due to such vacancies
 - v) Additional Benches of State Commission and additional District Forums may be set up wherever required for timely disposal of cases

REVIEW OF CONSUMER PROTECTION MEASURES IN STATES/U.TS:

- i) All the States showing poor performance to become more pro-active in the area of Consumer Protection.
- ii) The State Governments may consider creation of additional posts in Consumer Forums wherever required, as per their work-study norms as done in the case of National Consumer Disputes Redressal Commission.
- iii) Presidents/Members of the Consumer Forums as well as the officials working in the Consumer Forums to be sent for the training being organized for them by IIPA and BIS
- iv) States/UTs should follow the various remedial measures suggested by the Department from time to time for improving the functioning of Consumer Forums and to improve the level of consumer awareness in their respective States
- v) States to share their success stories on any aspect regarding better protection of the interests of the consumer with the Department of Consumer Affairs so that it could be deliberated upon with all the States for the benefit of everyone.
- vi) Mass Consumer Movement can be built up by utilizing the services of NGO's, prominent public men etc. Their cooperation could be solicited for settling consumer grievances.

ALTERNATE DISPUTE RESOLUTION MECHANISM FOR SPEEDY REDRESSAL OF CONSUMER GRIEVANCES:

Following suggestions for speedy redressal of consumer grievances to be considered by States/UTs.

- i) Consumer Forums could be declared as a Lok Adalat by the Legal Services Authorities Act making the award equivalent to that of Lok Adalat and non-appealable. Even otherwise it could hold sittings similar to Lok Adalats on pre-announced date.
- ii) The Consumer Forums could make lists of pending cases and hand over copies to the District Collector requesting him to establish informal contacts with the parties and make attempts to bring about a settlement between them.
- iii) The Presiding Officer and Memebtrs could persuade the parties during regular hearing to come to the just and mutual agreement and have the case decided on the date of Lok Adalat.
- iv) Senior Officers of the Consumer Affairs Department of the State could hold meetings with their counterpart in concerned Government Departments whose cases are pending in the Consumer Forums and request them to expedite settlement of these cases.
- v) There should be regular interaction between Presiding Officer, District Collector and NGOs working in the District

ANNEXURE - XI

SOME REFERENCES:

1. Supposing the Supreme Court was to pass a decree, in an appeal in favour of plaintiff, the decree would be executable by the original court and not by Supreme Court II (2005) CPJ 10.
2. Litigant should not suffer due to lapse on part of Advocate II (2005) CPJ 161
3. Master liable for mistake committed by agents and sub-agents II (2005) CPJ 219
4. Employees of all private organizations, availing services of deposit of provident fund are consumers III (2005) CPJ 155
5. Judgment against dead person is nullity, inconceivable in eyes of law III (2005) CPJ 77
6. Benefits claimed either by way of interest or compensation not to be added for purpose of determination of valuation of subject matter of complaint II (2005) CPJ 631
7. Public interest litigation not entertainable by Forum. II (2005) CPJ 727
8. Parties cannot be permitted to go on filing its pleading as per its sweet will. Further evidence at belated stage not permissible II (2005) CPJ 129
9. Court of law has no jurisdiction to direct matter to be governed by one statute when provisions of another statute applicable II (2005) CPJ 1 (SC)
10. Result of relief that may ultimately be granted, not to be taken into account while determining the pecuniary jurisdiction IV (2003) CPJ 98
11. Forum has no jurisdiction to consider legality or declare

any rule in prospectus of any institution as unconscionable IV (2003) CPJ 500

12. Complaint once admitted for adjudication, same has to be proceeded with and brought to logical conclusion I (2005) CPJ 253

ANNEXURE - XII

MEDICAL NEGLIGENCE

It is necessary to understand the meaning of negligence in order to adjudicate medical negligence cases.

Negligence:

The definition for 'negligence' involves three constituents

1. A legal duty to exercise due care on the part of the party complained of towards the party complaining
2. Breach of the said duty
3. Consequential damage

According to Charles worth & Percy on negligence (Tenth Edition 2001) negligence has three meanings they are;

1. A state of mind, in which it is opposed to intention
2. Careless conduct and
3. The breach of duty to take care that is imposed by either statute or common law

A breach of duty may be occasioned either by not doing something, which a reasonable man, under a given set of circumstances would do, or by doing some act, which a reasonable prudent man would not do.

All the above three meaning are applicable in different circumstances but any of them does not necessarily exclude the other meanings.

If the claimant satisfies the court on the evidence that these three ingredients are made out the defendant should be held liable in negligence.

Negligence has many manifestations, negligence per se, active negligence, passive negligence, active negligence,

collateral negligence, comparative negligence, concurring negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, willful or reckless negligence. When a person is guilty of negligence per se, no further proof is needed.

It is observed that 5% of the cases pending in the Redressal Forums relate to medical negligence. If not in other districts, particularly in urban districts the filing of medical negligence cases is on increase. These cases are time consuming due to recording of elaborate evidence calling experts of medical profession to give their opinion in order to decide whether there is negligence on the part of doctor. As majority of doctors are not issuing receipts for the fee collected from the patient, the patients are at a loss to prove that they hired the services of the doctor. Aggrieved patients of government hospital, where the services are rendered free of charge, do not come under the ambit of Consumer Protection Act. Further the opinions expressed by experts and the counters filed by doctors are full of medical jargon. Members are required to equip themselves with the knowledge on how to take deposition, what are to be permitted and what are not to be permitted in adducing evidence and cross-examination thereon. A good knowledge of Evidence Act and rules of civil procedure would enable the members to cope up with the situation. It is also very much necessary for the members to go through the findings of the Supreme Court on service rendered by the hospitals and the medical practitioners.

- (1) Service rendered to a patient by a medical practitioner (except where the Doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2 (1)(o) of the Act.

- (2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.
- (3) A 'contract of personal service' has to be distinguished from a 'contract for personal services'. In the absence of a relationship of master and servant between the patient and Medical Practitioner, the service rendered by a Medical Practitioner to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is rendered under a 'contract for personal services' and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1)(o) of the Act.
- (4) The expression 'contract of personal service' in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a Medical Officer for the purpose of rendering medical service to the employer. The service rendered by a Medical Officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(o) of the Act
- (5) Service rendered free of charge by a Medical Practitioner attached to a hospital / Nursing home or a medical officer employed in a hospital / Nursing home where such services are rendered free of charge to everybody, would not be "service" as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital / nursing home would not alter the position.

- (6) Service rendered at a non-Government hospital/Nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service – is outside the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital / Nursing home would not alter the position.
- (7) Service rendered at a non-Government hospital / Nursing home where charges are required to be paid by the persons availing such services falls within the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act.
- (8) Service rendered at a non-Government hospital / Nursing home where charges are required to be paid by persons who are in a position to pay and persons who can not afford to pay are rendered service free of charge would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be “service” and the recipient a “consumer” under the Act.
- (9) Service rendered at a Government hospital / health center/ dispensary where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service – is outside the purview of the expression ‘service’ as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital / nursing home would not alter the position.
- (10) Service rendered at a Government hospital / health center / dispensary where services are rendered on

payment of charges and also rendered free of charge to other persons availing such services would fall within the ambit of the expression ‘service’ as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be “service” and the recipient a “consumer” under the Act.

- (11) Service rendered by a medical practitioner or hospital / nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the Insurance Company and such service would fall within the ambit of ‘service’ as defined in Section 2 (1)(o) of the Act.
- (12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital / nursing home would constitute ‘service’ under Section 2(1)(o) of the Act.”

In *Dr. Pradeep Kayal & Another Vs. Balchand & Ors*, III (2004) CPJ 144 the Madhya Pradesh State Commission held as follows:

“The record reveals that the O.P doctor has not produced any papers pertaining to day today treatment and hospital record regarding the admission of patient examination and treatment given. The District Forum has rightly pointed out that this can be treated as a deficiency on the part of the doctor. The District Forum has also analysed the case in detail and has reached to the conclusion that so far as the operation part is concerned, the doctor cannot be held responsible for any

lapse or negligence because the death cannot be attributed to operation, but the District Forum has rightly observed that by not producing the hospital record, the doctor attempted to hide procedure followed by him. Therefore the District Forum has found the doctor partially negligent in not maintaining the transparency in treatment record” Accordingly State Commission refused to interfere with the order of the Forum in this case, the complainant claimed compensation of Rs.45,000/- where as District Forum awarded Rs.10,000/- towards compensation.

Members should remember the following while adjudicating medical negligence cases.

1. A person who does not have knowledge of a particular system of medicine and practices in that system is a quack. Where a person is guilty of negligence per se, no further proof is needed (Poonam Verma Vs. Ashwin Patel & Ors II (1996) CPJ 1 SC)
2. A doctor when consulted by a patient owes certain duties, namely
 - a) a duty of care in deciding whether to undertake the case;
 - b) a duty of care in deciding what treatment to give; and
 - c) a duty of care in administration of that treatment (Dr.Lakshman Bala Krishna Joshi Vs. Dr. Trimbak Bapu Godbole & Anr AIR 1969 SC 128)
3. A doctor is not guilty of negligence if he acted in accordance with a practice accepted as proper by a responsible body of medical-men skilled in that particular art (Bolam Vs. Friern Hospital Management Committee (1957) 1 WLR 582)
4. The case of negligence of the doctor cannot be made out

unless it is proved by reliable evidence and supported by expert evidence (Smt Vimallesh Dixit Vs. Dr.R.K.Singhal 1(2004) CPJ 123)

5. If any hospital fails to report about the accident to the police it is a deficiency in service (Shanmuga Hospitals Vs. B.Jagadesan III (2005) CPJ 169)
6. Medical Practitioner not guilty of negligence unless proved that doctor acted with sufficient care and skill. (Ghisaram Vs. Dr P.K.Bansal & Anr IV (2003) CPJ 299)
7. If a person holds himself out as possessing special skill and knowledge and is consulted on behalf of a patient he owes a duty to the patient to use diligence, care, knowledge, skill and caution in administering the treatment. The law requires a fair and reasonable standard care and competence (R Vs. Bateman (1925) 94 LJ KB 791)
8. A doctor was not to be held negligent simply because something went wrong. He was not liable for mischance or mis-adventure; or for an error of judgment. He was not liable for taking once choice out of two or for favouring one school rather than another. (Hucks Vs. Cole (1968) 118 New Law Journal 469)
9. If an operation is conducted without the consent of the patient, it is deficiency in service. (Dr.Janaki S. Kumar Vs. Mrs. Sarafunnisa I (2000) CPJ 66)

Maxim: Sic Utere tuo ut alienum non loedas (a person is held liable at law for the consequences of his negligence)

Useful reference;

A Homeopathic practitioner, having practiced in allopathy, without being qualified in that system, was guilty of negligence per se as decided by Supreme Court in Poonam Verma Vs. Ashwin Patel & Ors (1996) II CPJ 1 (SC)